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IMMIGRATION REFORM AND CONTROL ACT OF 1985

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND REFUGEE POLICY

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1200

A BILL TO AMEND THE IMMIGRATION AND NATIONALITY ACT TO EFFECTIVELY CONTROL UNAUTHORIZED IMMIGRATION TO THE UNITED STATES, AND FOR OTHER PURPOSES

JUNE 17, 18, AND 24, 1985

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IMMIGRATION REFORM AND CONTROL ACT OF 1985

MONDAY, JUNE 17, 1985

U.S. Senate,
Subcommittee on Immigration and Refugee Policy,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, at 9:30 a.m., in room 226, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the subcommittee) presiding.

Present: Senators Denton and Simon.

Staff present: Richard W. Day, staff director and chief counsel; Carl Hampe, John Ratigan, Deborah Gibbs, and Charles Wood.

OPENING STATEMENT OF ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator Simpson. The hearing will come to order, please.

Good morning. I want to stress I was very sorry we had to cancel the Friday hearing, but after we had all that good progress in the Senate with clean water and the Nuclear Regulatory Commission, and our leader said "I think we can wind up Friday," I said: "Great. I will head for Cody, WY." And so I did so, and it was only because of our accelerated schedule there that I was able to do that. We will pick up today, just where we left off.

Well, Father Ted Hesburgh. Nice to see you there. I will come to you in just a moment. Always a pleasure to have you. You are very important to me and my past. I want to express appreciation for two able members who served on the subcommittee last year, Senator McC. Mathias and Senator Howell Heflin, who are no longer on the subcommittee. I deeply appreciated their help in every way.

We have two new fine members, Senator Jerry Denton and Senator Paul Simon. I am very much looking forward to working with them and benefiting from them.

Speaking of Senator Simon, there he is, and it is a real pleasure to have him on this subcommittee. I look forward to working with him and benefiting from his thoughtful participation, and I will have that, because I know Paul. We were legislators together in State legislative activities, so it is a personal privilege to have them aboard.

I will say come on in, the water is fine. It is hot, but it is fine. People do not usually crash the doors down to get on to this subcommittee, so you are welcome. Very welcome. I look forward again to working with Senator Grassley, who has been my strong right arm. A very active supporter and very helpful to me and the committee activities, right here with me at many a hearing, and I always look forward to working with my friend, the ranking minority member, Senator Ted Kennedy, who has always provided thoughtful guidance, and steady counsel and assistance to me. He is a pleasure to work with. And it will be so again, even in our occasional and sincere disagreements when they occur.

So we will have 3 full days of hearings beginning today, tomorrow, and then, on June 24, and while this bill contains some changes which may make it a better bill than those I sponsored in the two previous Congresses, it represents a comprehensive approach to immigration reform. And that immigration reform is still there.

One, penalties for employers who knowingly hire undocumented workers.

Two, a uniform system to determine worker eligibility.

Three, increased enforcement at the border and in the interior. It also contains a legalization program, visa waiver, and provisions to provide relief for certain G-4 visa holders. It further provides a broad streamlining of the H-2 Program in order to provide easier access to needed foreign workers for agricultural employers. It is emphatically not a return to the repugnant bracero program of the past. The bill contains an agricultural worker transition program to ease that change for growers to end dependence on undocumented workers through use of legal and temporary workers, and the bill does not contain any changes in our legal immigration system—which you and I looked at carefully as we were on the Select Commission—nor does it have any reference to asylum adjudication procedures which were in the previous two bills. Major changes include a new system of voluntary recordkeeping on the part of employers, and a triggering mechanism for the legalization program. I think many, probably most, American employers do not hire undocumented workers, nor do they intend to hire undocumented workers. We have attempted to exempt them from the paperwork requirements which are designed to assist employers who are in areas of businesses where undocumented workers are commonly employed. We have then provided that a process of legalization shall be delayed until we are able to see that the new enforcement measures are effective.

We discussed that carefully when we were both members of the Select Commission. The experience of other countries has shown us that legalization without effective enforcement can lead to a low participation rate in the legalization program, and also serve as a stimulus to further illegal entry.

However, I want to reemphasize my strong, deep commitment to legalization. I firmly believe that a one-time only legalization program is not only good public policy, it is good sense, and it is fully in the best interest of this Nation. So here we go again, and, like they say in the Cheyenne frontier days, here we come out of chute No. 4, and we will process this legislation again, and we will consider every amendment offered by the thoughtful Members of this body who wish to approve the bill in the subcommittee, the full committee, or the Senate. This bill is most assuredly not perfect, and it will certainly not approach perfection and implementation. I can assure you of that. It is a very small first step forward, but surely it is better than whatever we are doing now.

I love to hear that babble in the background, "well, why do we not just enforce the laws of the United States? Spend money to do that," they say. A nice idea. A really nice idea. But the current law of the United States says it is legal to hire illegals, but it is illegal for the illegal to work. Some law.

And that is why we are in this box. The bill represents, I think, a balanced and reasonable approach toward making immigration to the United States once again serve our national interest, not only in theory, as expressed on the statute books, but in actual operation. So before I come to the first witness, let me recognize Senator Simon, who may have a statement, and again, I very sincerely welcome you to the activities on the Subcommittee on Immigration and Refugee Policy. I know of your great interest already born in it.

OPENING STATEMENT OF PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Thank you very much, Mr. Chairman.

I am pleased to be on this subcommittee, pleased to be working with you.

As you indicated, we knew each other when we were State legislators. It was a year or two ago, as I recall, but I come to this subcommittee without great knowledge, I confess. I am eager to learn.

I have some overall impressions: One, that more important than any bill that we pass is working with Mexico to raise the standard of living and help the economy of that country.

Two, that it is desirable to have legislation, and somehow we have to struggle with this dilemma of how you have employer sanctions and not create discrimination. I am eager to work with you and with the other members of the subcommittee to try and help find ways to accomplish this.

I have also been interested, really, from my years in the State legislature, when I saw illegals being abused. That is how I got in touch with the Hispanic community in my State. I come from a large rural area where there are no Hispanic votes in my congressional district in southern Illinois. People who came to work on the farms ended up facing some very severe problems and I ended up getting involved in State legislation to provide additional protection for them.

So I am here to learn, and I cannot think of a better instructor to start off with than a long-time friend, Father Hesburgh, with whom I have worked on a variety of issues, and whose leadership in this particular area I have appreciated and known about for some time.

So I am here not with any great knowledge, but eager to absorb and get some wisdom from you, Mr. Chairman, from our witnesses, and from others who are concerned about this issue.

[Prepared statement follows:]

Prepared Statement of Senator Paul Simon

I am honored to participate in the first of a series of hearings which promise to have a serious impact on the future of our country. I am particularly pleased to serve in the company of the dedicated and thoughtful senator from Wyoming, Senator Simpson, whose previous work on this subcommittee, brought new meaning to the word tireless. I am also fortunate to be serving with my senior colleague from Massachusetts, Senator Kennedy who has also, through his thoughtful and exhaustive work on this subcommittee, provided effective leadership on the issue of immigration during the past several years.

This is the third time this subcommittee has attempted to provide solid and responsible solutions to this Nation's immigration problems and I hope to learn more about the issues from my colleagues' wealth of knowledge and understanding of the topic. We need a balanced and equitable approach and I hope to contribute to that process.

There are several concerns I have. I am concerned about the legalization program provided in S. 1200. It provides for legalization at some point after the effectiveness of the employer sanctions provisions has been evaluated. This concerns me because of the uncertain state of a large but unknown number of undocumented aliens living and working in this country. What will happen to them under this bill between the period after employer sanctions take effect but before legalization is implemented is unclear. This is an area that I would like to explore further.

Another issue is discrimination against any foreign-looking or foreign-sounding as a result of employer sanctions provisions of this bill. Again, I hope to gain a better understanding of that issue.

Throughout the immigration debate in the last few Congresses, I heard little about the role of Mexico and working with that country. Our neighbor has over 77 million people, a 2,000 mile border we share, an annual per capita income of $2,000 compared to $8,000 in the United States, and 12 percent unemployment and 40 percent underemployment. More communication with our neighbor to the south could strengthen the economy of that nation—and that will do more than a dozen bills.

I look forward to learning more about our immigration policy, Mr. Chairman.

Senator Simpson. Thank you, Paul. It will be great working with you.

Our first witness is Father Ted Hesburgh, former chairman of the Select Commission on Immigration and Refugee Policy, former Chairman of the Civil Rights Commission of the United States. I served with Father Ted on the Select Commission on Immigration. Few people are more knowledgeable, more candid, more constructive in the area of immigration reform.

I looked at the witness list, beginning with you, Father Ted, and that reminded me of a story of the old western attorney who decided to leave town, and he took all his witnesses with him. You can think about that when you get home.

So it is because these are the same people that have a grave interest, the same people on both sides of the issue that have a grave interest in the situation, but you have been a great source of comfort and support to me, and I cherish that friendship, and we look forward to hearing your testimony. It is nice to have you with us.

STATEMENT OF REV. THEODORE M. HESBURGH, C.S.C., FORMER CHAIRMAN, SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

Father Hesburgh. Thank you very much, Senator Simpson, and Senator Simon. It is good to see you here for the first time as a Senator.

Senator Simon. Thank you very much

Father Hesburgh. As the Senator indicated, I am Father Ted Hesburgh, and I have been president of Notre Dame for the last 33 years.

After serving on about 13 Presidential and senatorial commissions, I must say it was with some anticipation that, I became chairman succeeding the former Governor of Florida, of the U. S. Select Commission on Immigration and Refugee Policy. This was during the last 2 years of the Carter administration. It was, as most commissions are, bipartisan.

I also must say it was about as bipartisan a commission as I have ever served on. We had the Secretary of State, Attorney General, the Secretary then of HEW, and the Secretary of Labor.

From the Senate we had the then-head of the Judiciary, Senator Kennedy, DeConcini, Mathias, and, of course, Senator Simpson. We had a House bipartisan group of four, headed by Peter Rodino, who was then head of the Judiciary and, I believe, still is. We also had four public members, of whom I was one, and the chairman.

I have to say it is an experience to come in to something that one does not know very much about except in a kind of anecdotal way, and then spend 2 intensive years of hearings at all ports of entry into this country; all kinds of places that we visited and spent days listening to witnesses regarding the basic immigration problem in this country.

Several things were said during the course of our 2 years of discussion and hearings and study. The first thing we always heard was that the immigration bill was the worst law on the books, second only to the tax bill.

The second thing we heard was that this is one of the few countries on Earth that does not control its borders. Of course, we have a pretty long border, around 12,000 miles. It seemed to me that we might wind our way through this briarpatch, which I think we did, with about 160 separate votes from the Commission at the end of a 2-year-long study. I would like to present today, just in general, the very basic conclusions we came up with, which means reducing about 12 volumes of reports into something like 3 points.

The first point is that we looked at every conceivable way of controlling immigration, and we came to the conclusion after 2 years of intensive study that the only way you could really control immigration is to control that which brings people to this country, both legally and illegally, and that is probably what brought most of our ancestors to this country; namely, the chance for a better life, which generally means employment and being able to earn the means of a better life.

There is nothing wrong in this. As I say, that is probably why most of our ancestors came here, for a better economic and social opportunity, better education, better health, better everything. That is the blessing of America, and the problem we have in a very specific way is that we are, in a sense, a center of prosperity in a sea of disaster and economic hopelessness. We attract people in that we just happen to be a magnet of goodness, not a magnet of evil. I do not find people standing in line to go to the U.S.S.R, for example, or to get visas to go there. I do not see people standing in line to go to many countries on this Earth, but God knows they are standing in line in the millions for this country. Also, many are entering as illegals as the last hope in their lives.

We found after much, much study that the only real answer to this problem was to somehow demagnetize that great magnet that brings people here, and the only way we could see of doing this was through employer sanctions. We wanted to do something about a law which says it is illegal for an illegal alien to work, but it is not legal to hire them to work, which adds up to a great deal of exploitation.

So we decided, and we all agreed on this, that the only way that one could realistically do anything about illegal immigration was to somehow control employment, and say to employers that if you insist on hiring illegals, you are going to get caught by the law, and you will pay a fine or go to jail or both. I do not know any other way of solving the problem. I know that we can beef up the border patrol, and we have been in favor of that as a Commission, but we felt that our really central point of control was to get something like employer sanctions.

That led us to the second point as to how you make employer sanctions viable and efficient, and again, there is no way of doing it except through some kind of identification. Unless you can get a simple means of identification that will say to the employer that this man or woman is eligible for employment, and this one is not, the idea of employer sanctions is meaningless.

We argued this up and down for months, and yet I think I come down where I did in those days, 5 years ago, on the fact that one simple means of identification that is also identification already carried by everyone, it is also identification that is practically given to us at birth. It is also identification used today, at least in 10 different important transactions in this country, and I am speaking about the Social Security card. If this kind of identification is upgraded and made less open to counterfeit and falsification, it would be, in my judgment, the best kind of identification to have. That is a personal opinion, not the opinion of our Commission. Although all our Commission were agreed on this second point, that we needed some form of identification that was not easily counterfeitable. The Social Security card, is also used for so many other things. We even use the number for our driver's license in Indiana. If someone applies to our university, the first question is: What is your Social Security number? It is something in such common usage, I do not see why it should not be made less counterfeitable.

The third point was on legalization. That is one of the points on which we were all unanimous. We all felt that while everybody says having some millions of illegals in this country is a bad thing, the fact is they are here, the fact is they are working. Many have been working for many years. The fact is that most of their children are American citizens if they are born here. The fact is that most of them are not on welfare. They are earning their way; they are contributing to the country. They are paying taxes in the case where their salaries are withheld, and they have no benefits from this because their Social Security card, if they have one, is false.

We had a feeling, all of us, I think, that these were people living in the shadows. These were people who somehow had to be brought into the light of day so they could not be exploited, as they presently are. These people, by their very presence, have depressed the whole labor force, both as to salaries, living conditions, working conditions, everything else, because they have no redress. They cannot go to the police, the authorities, because they feel they will be deported. These people are here. These people are working for the main part. These people are law-abiding citizens for the most part, yet they are not citizens. They are law abiding, and we felt that as soon as possible they should be brought out of the shadows. I have to say that when our Commission voted unanimously for legalization of illegal aliens, they did so on one condition: that somehow the sieve that we call a border could be tightened up, that somehow we would bring our illegal immigration under control. Otherwise, they felt that legalization would be just another magnet to add to employment opportunity, and that would be a bad thing.

We do not want to give legalization and use it as a motivation for more illegal entry. Those are the three points of our Commission. I have read carefully the bill that you are presenting and I want to say three things about it.

First, these three points are in the bill. I am not sure I am totally in agreement with the way they are in the bill, but they are in the bill, and that is important. I have to say that they are in the bill in a thoughtful way that is always a compromise. It is the nature of law. It often is a compromise, but in general, I think one can say this is one law that really looks to the common good of this country, and while there will be a thousand voices of opposition, I do not worry that much about it.

I think the three points are in the bill. Are they in the bill effectively? Again, I say this is a matter of judgment, and often a matter of compromise. Starting at the third point, I would like to see legalization take place as soon as possible, but I do not think it can ever take place unless it is linked with the other points, and there must be proof of identification in order for people to work.

My second point is, I would like to congratulate Senator Simpson on opening this legislation. I think it is a living scandal that we have the kind of immigration that we have. We play cops and robbers on the border every day involving millions of people. Our borders are such a sieve when they need not be. We have a silly law that the Senator has already referred to that it is illegal for an illegal to work, and yet it is legal to hire them to work, and you get cheap labor that way.

I think, Senator Simpson, I would like to congratulate you for sticking with this line, when so many other people are running for the exits, because this is not an easy problem to solve, and yet I think you have in these three points you have mentioned the heart of the solution.

The only question is to put them in such a form that they get through the Senate and House together. They have been through both the Senate and House. We have got to do it simultaneously this time.

Last, it is probably a fair statement that this bill is tougher than the bill that passed the Senate twice and the House once. It is tougher in a way because so many people have opposed it, and in opposing it, I think, opposed the good of their own people.

I would predict that if this bill does not get through, even in some kind of amended form, the next bill, if there is a next bill, and I do not know how long your patience is going to hold, Senator Simpson, but if there is a next bill, it will be tougher than this one.

And let me make one more prediction. If we do not pass a bill, we will find a military control of our borders. We will find an arrangement that will not satisfy any one of us very much. We will find sweeps, which people forget about, which we have had historically in this country, when over a million people were rounded up, even during the Eisenhower era and pushed back over the Mexican border.

It is true. It happened, and many of the people swept back over the border were citizens of this country, and had to somehow work their way back in.

I think there is a rational way to solve problems, and this is the beginning of a rational solution to this problem. You can legitimately disagree on what is a good idea of identification for employers. You can argue whether or not employers should keep records. You can argue whether or not there should be a commission to trigger legalization.

I think I could legitimately argue pro and con, both sides of all of those questions, and I know which side I come down on, but you cannot legitimately argue, I do not think, that you can have legitimate immigration reform without employer sanctions that is somehow demagnetizing the magnet that is bringing people here. Also, you must have simple identification, and every one of us has in our pockets a simple kind of identification, called a credit card, and lastly, you cannot, I think, go on forever filling this country with illegal immigrants, and at the same time not doing something about illegal immigrants that have been here for a long time.

I would say let us solve the problem for now. It does not mean that there are going to be other problems for the future, and if people want to argue about it, I am sure they will, but my plea to you, Senator Simpson, is to stay with it and let us do everything we can to get a bill through the Senate and House this year.

Whatever bill that is, it will be somewhat imperfect, as you have already said, but if you just took this bill as it is today and passed it, we would be so much better off than we are right now. There would be so many people coming out of the shadows.

My last word is that I would like to see them come out of the shadows as quickly as possible, and I worry about commissions taking so long that more years will pass before anything happens, if anything happens, and I say that from being on 14 of these commissions.

I would rather trigger it more closely, that the day we put sanctions into place, that we will move forward on legalization, and we will not put employer sanctions into place unless we are agreed on what identification means is and have an effective way and not an ineffective way of doing it.

I appreciate the opportunity of saying these things. They have been churning in my mind for the 2 years that we had the Commission studying them. They have been churning in my mind for the past 5 years, and I think I have read just about everything that has come out on the immigration problem.

I am delighted that here is one last try. May I underline once more, it may well be one last try, and I would plead with those who have obstructed this bill so often in the past to somehow have their say and get behind a bill this time. Lacking such a bill in the rather near future, I worry about what the future will be in this particular field, I do not look forward to massive dissatisfaction of people out of work because of illegal aliens taking their job. I hate to think of militarizing our borders and getting to that state of affairs. I hate to think that a country this large is unable to solve a problem that accedes to a rational solution with little thought, so I congratulate you, Senator, and your committee on a good start. I am happy to have had the opportunity of having my say. If there are any questions I could answer, I would be very happy to try to answer them.

Senator Simpson. Thank you very much, Father Hesburgh. That is important material you shared with us. Those things have been heavy on your conscience for some years, and you shared them with us without notes, with a deep desire to get something done.

I hope that we never see you get commissioned out of the United States, now that you have been on 14 commissions. We probably have some more in the United States for you to serve on, but certainly your service to the United States on various commissions is appreciated. I think your work with the Civil Rights Commission and on things that were deeply and highly controversial in the part are now commonplace in our country, because you probed them then, amid a great hue and cry. Now when we see them, we do not even think of them. They are just part of our fabric.

I do have just a few questions, and, of course, one is that the claim of discrimination is going to increase due to employer sanctions.

How do you respond to those persons who claim that discrimination is only going to increase due to employer sanctions?

Father Hesburgh. I find that the most flimsy argument that I have heard in this whole area, because if you take seriously what I have said as kind of a tripartite approach to this problem; namely, employer sanctions, a good ID card of some kind, and legalization, then if you go to get employment, and someone says I am not interested because you look un-American, or some such thing, you just flash a card that says you are eligible for employment, and someone does not employ you, there is a very serious law about that kind of behavior.

The ID is what saves you from the discrimination. If you are looking for a job, and the very application for a job, I think, should have the responsibility of using the ID card no matter where you are getting a job, and that just eliminates discrimination, because if you have an ID saying you are eligible for employment in this country and someone does not employ you after seeing your ID card saying you are eligible, they are in trouble with the law in this country.

I do not see how the argument against an ID holds any water. I would think if ~~I was a~~ citizen who was being discriminated against because of the way I looked, I would want to have that card.

If I went back home and saw my grandmother and got back to the border and was asked for identification, I would want something to wave in their faces and say, "Lay off. I am a permanent resident or a citizen." I think the card would be a benefit to everyone suffering potential discrimination.

Senator **Simpson**. That has been a curious thing for me to deal with, because going back in the hearings in 1971, 1972, in the U. S. House of Representatives, the issue of discrimination solely from employer sanctions was not raised. It had been hinted at but never raised. They were certainly not raised on the final vote on sanctions. The vote was 260 to 70, or something. I do not recall exactly. It passed twice by the U.S. House of Representatives and came here where it died in the Senate committee, and that must have been a great frustration to Peter Rodino, but at that time I think people would be interested to see who voted for employer sanctions. It was a total mixed bag. Democrats, Republicans, ethnic groups, whatever you wished to express, were all represented in favor of employer sanctions, but I found it became a good hook. If you wanted to oppose the bill, just grab this hook, and that has been a passing thing to watch.

I would be interested in your suggestions concerning what—and I realize this legalization commission is a controversial issue, but it is an approach that I wish to express, an alternative—what criteria the legalization commission might use to determine that more effective enforcement is in place.

I think we both agree, and the language of the Select Commission was this. It said, "Without more effective enforcement legalization can serve as a stimulus for further illegal entry and absence of effective enforcement could lead to a low participation rate in the legalization program."

Those are quotes from the Commission. What standards or measures could the Commission use, in your mind?

Father **Hesburgh**. Well, I think there are some fairly obvious standards, but like so many things that seem obvious, they are not all that obvious. For example, how could you get any kind of a reading at the border when you do not know today how many people are coming in illegally. We will not know next year how many are coming in illegally. It is not the kind of thing that we can make book on. It is a very chancy kind of guess as to how many get in illegally, how many do not.

We could say, for example, 1,200,000 were stopped at the border trying to get in illegally, and that number might give you some indication, but it seems to me that it would be a very tricky thing to get firm statistics on employer right off.

I would rather make an act of faith that if we are going to have employer sanctions, it will work just as withholdings by employers to collect income tax works. It just seems to me to make sense that if employers know what they are up against—and I know you have gone from criminal to civil penalties for that, and that is fine—and we are serious about it, it will work. We know where to look for abuses, and we are not going to look at every employer in the United States. We are going to look at people who hire illegals, agricultural workers, restaurant workers or garment workers, workers who are presently being exploited.

We know where to look, and if you look in these places and find there are not a lot of illegals around, that gives you some sort of indication that the program is working. I would feel a lot easier, I think, if we would have employer sanctions with a good identjfication mechanism, and as simple as possible. That is why I tend to think of Social Security upgrading, and then move directly on the legalization.

Let me say one thing. Other countries that have legalization have found that only 20 or 30 percent of the people show up to be legalized. That was true of Canada, I believe. It is true of Australia and it was somewhat true, I think, in some countries in Europe who tried to do this. And for that reason, I do not think legalization is going to mean an enormous flood of people to be legalized.

However, I was glad to see that you have a provision in your bill so that the legalization approach could be made through third parties, social organizations, churches, et cetera. If a person came in and said, "I would like to apply for legalization," a professional in that group could see if he were qualified, or not qualified. If the professional person says no, you do not have the qualifications for legalization, he does not have to call the police and say, "I have a real live one here." He simply says, "I am sorry. You are not eligible for legalization."

But you walk out a free person.

Senator SIMPSON. But you and I agree on other issues; that is, worker identification and verification is essential to an effective and nondiscriminatory program of employer sanctions. Given the demonstrated problems that you and I have seen as it goes through the legislative tangle, how do you suggest that we ensure that such a program—a more secure verification system—is seriously considered.

Father HESBURGH. Personally, I would bite the bullet and go with Social Security for several reasons.

First, it is a very useful card to have, and all of use it all the time.

Now, I had to use it yesterday to get frequent flyer status on Piedmont Airlines. That is how much it is used.

Second, all of the other means, I find, are very imperfect; birth certificate, even American passports, you get illegally, without too much trouble. The present Social Security card, is highly counterfeitable, as are other kinds of records. You can buy them for a very cheap price at the border, and I just do not know anything that has been suggested as reasonable identification that really works. I think what we need is to use the modern technology, whether it is laser implantation or electromagnetic imprint, imprint one in a card, something that would make it at least as secure as your credit cards, Visa, American Express and all the rest, and I think that new technology makes that available.

Of course, there is nothing that cannot be counterfeited, but at least makes it very difficult. I would be very serious about that. I say without a serious, easily obtainable, easily verifiable means of identification, employer sanctions just will not work.

Senator SIMPSON. It was interesting during the conference committee, and it came up with the House conferees, who said, "Well, we do not want a national identity card," and I said, "Well, who does?" They then said "Are you ready to put that in the bill?" I said, "Go ahead and put it in there." And they did and they said "There shall be no national ID card." That was an interesting concept. It was something I never embraced at the time, and it still went into the conference activity.

I think that took away a lot of fun for some people.

Senator Simon.

Senator **Simon**. Thank you, Mr Chairman. Thank you, Father Hesburgh, for your testimony.

I am one of those who used that flimsy excuse of discrimination, Mr. Chairman. I am concerned that if you have employer sanctions and you do not have what really we are focusing on today is some type of identification, then I think clearly you do end up with discrimination.

If I am an employer in a small business, like I used to have, if two people come to me and one of them speaks with a little bit of an accent or something, and I say what the heck, I might have some problems here, I will employ the other person. We might want to work some type of identification card that is not mandatory. It is interesting that Roger Bowman, the father of the American Civil Liberties Union, had no objection to a national identification card, but there are a great many people who just instinctively react negatively when you talk about that. What about a national Social Security card that people could get voluntarily? I realize that it would be a problem for the committee to find these, because you do not have to be a citizen to get a Social Security card.

Father **Hesburgh**. Right.

Senator **Simon**. But we would, No. 1, have a picture and some indication of status, citizen, permanent resident, what your status is, it seems to me that is really the crux.

If we can come up with something solid there that really provides an answer for where we are going, you may want to comment on that.

Father **Hesburgh**. Senator, I fail to see what the great problem is. I have now on my person, and I did not come in here loaded for this, but just offhand on my person right now I have a driver's license with my picture on it. I have three or four things with thumbprints on it. I have a State Department ID I still have from having been an ambassador with my picture on it, and all kinds of coded stuff on a chip, I believe. I have a corporation ID that I do business with so that I can enter and do business easily with my picture on it, the Chase Manhattan Bank. I have half a dozen credit cards that have all kinds of information about me personally. I have records all over this city because of some service with the Armed Forces, fingerprints for clearances, and all kinds of other things.

Someone said, well, if you have an ID card it is going to take away people's privacy. Let me just tell you that the day the computer was invented, privacy went out the window, at least the kind that we used to talk about before the computer was invented. It does not bother me that so many people have this information on me, but to say now that to solve this problem you are going to have some kind of a foolproof ID, that is very simple to use, and it can be done in 30 seconds, and it is no big embarrassment to anyone, why not? To me, people who fight that just do not want an immigration cleanup. They want things to go on the way they are going on now, because it is so obvious and simple.

Senator **Simon**. If we could do this voluntarily so that people were satisfied with the present Social Security card, they do not need to go in that direction, it seems to me that we are moving in the right direction.

Let me ask you another question. Maybe I really ought to be directing this to the chairman. I have not had a chance to discuss this with him. And that is the reason for the delayed legalization. Here again, I speak as one brand new, and getting on top of this issue, is there a substantial reason for delayed legalization, rather than as was offered in the last bill?

Senator SIMPSON. I think Father Hesburgh addressed that briefly and may wish to again. It was felt that legalization as an immediate step—which has always been my best approach and one I favored before—would create a great increase in illegal immigration coming to the country. The other issue is the one that the Select Commission embraced totally: that you really should not have legalization until you were assured that we had begun to control illegal immigration.

In some cases we said not begun, but have fully implemented a system to slow the flow of illegal immigration. In other words, you would not grant legalization until enforcement mechanisms were in place so it would not happen again, and when we say this is a one-time shot, that is what we mean.

And the only way you can do that is to have these enforcement measures in place.

Father HESBURGH. I would like to see legalization as soon as possible, and I have enough faith in employer sanctions working, the way I believe the employer withholding taxes works fairly well, and it is not a police action, and I think employer sanctions will work if we have proper identification, a simple, easy, noncounterfeitable means of doing that. If those two things were in place, I would like to see us move right ahead on legalization, but I would have to say again for the Select Commission, unless we can assure that those two things are in place, employer sanctions with proper identification, the Select Commission would never have voted unanimously for legalization. I am totally in favor of legalization as quickly as possible, even without a commission, but I get back to those first two sticking points. We have got to have employer sanctions, and we have got to have much better means of identification than is currrently available.

Senator SIMON. Let me ask one final question that really is beyond the jurisdiction of this subcommittee, or even full committee.

It seems to me that if we are serious about this problem, as obviously you have been and the chairman has been, and both of you have contributed immensely, we also have to take a look at how we work with Mexico, because if we pass a dozen immigration bills and the standard of living down there remains the same, they are going to go around on the sea, they are going to build 20-mile tunnels. It will be impossible to control. You have been great in leading not only in this field but the Civil Rights Commission, the Overseas Development Council, and the whole question of Third World problems. If we could combine somehow a good, solid immigration bill with a good, solid program of cooperation with Mexico, to say there is a 5-year plan, 10-year plan of cooperation, that is going to aid the economy of Mexico, it seems to me that that kind of combination would be in everyone's interest. Do you have any reflection, and what can we do in that area?

Father HESBURGH. I have had some discussions about this with Gov. Bruce Babbitt on this out in Arizona, because he is very close to the problem. He says the real problem here is some kind of a better relationship with Mexico. It is an integral part of the total problem. We have something like 90 percent of the enforcement on our southern border and 10 percent on our northern border, and practically nothing on the points of entry on the Atlantic coast, and I think it is clear that with all the laws in the world, we still should parallel this activity, be having good conversations with Mexico about economic development, especially along our common border. You may have seen the last issue of the National Geographic, where it shows the twin cities along the border, and on one side it is a demonstration of shacks, no sanitation, illness, disease, what we are used to seeing in the slum areas of the world, and the other side is nice, bright, shiny glass buildings and the latest architecture and latest of everything, sanitized.

Now, I do not think it is possible to put human beings in that kind of a contact side by side and not expect some motion from that which is awful toward that which is good. You can look at El Paso and Ciudad Juarez, and look at those twin cities all along the border, and you have to say that the contrast is gruesome, but it is a contrast of this country and the rest of the world, at least the Third World. I would certainly support an effort between Governors of adjoining Mexican and American States to say what can we do to make a better situation along the border.

Let me add one more thing, Senator Simpson. We would understand this problem if we were to see it in a world context. I think one of the great future problems of the world is immigration and migrations. I think that is you look at the simple fact that the countries on earth are overcrowded and terribly hemmed in with the space available, even China, which is a very large country, is evidence of this. Every little spot of ground has something growing on it, but let me just say that we know that 80 percent of the world population only has access to 20 percent of the world's goodies; health, education, food, all of the things we need, and it is like the poor kid looking in the candy store window, that great wealth of candy, and he is hungry and it is warm in there and he is cold outside. The world is growing more and more like that child looking in at all that candy and all that warmth, and I have got to say to you, what does the world do if a hundred million Chinese say we have no more room to plant food, so we are going to move into Siberia? What are you going to do if 200 million people start walking? What are you going to say if 100 million Indians start walking toward Europe, where there is food lacking because of sudden climatic changes in India, and they know they are hungry and take a sack and start walking? What do you do? What do we do if Central America gets worse and worse and worse, from a security point of view, and a poverty point of view, and some day 50 million people from South America and Central America start walking north. What if everybody in the Caribbean gets a boat and starts coming to Florida?

There are limits to what you can do when you start with magnitudes like that. It has already started in Africa in smaller numbers. But if we do not do what you are indicating, help people grow food where they are, to have education and food where they are, we can surely expect them to do what they have always done, because man is a migratory animal. You can expect them to walk toward where there is food, health, housing, and especially walk toward where there is employment.

And Senator Simpson will remember in one of our hearings, and I will close with this, we asked a fellow, why do you keep coming back to the United States? It is a terrible anguish getting over the border. You have to get work and it is not all that easy getting work, and this fellow says, "If I come to America and I can only get 4 days of work, I will make more than I could working all month down in my little village, and, on top of that, there is no work down in my little village."

It is hard to do something about that without looking at that village, too.

Senator SIMON. Thank you, Mr. Chairman.

One final comment, because that is what you really summed up, where we are and what the problem is. I am not at all sure that some kind of parallel proposal to work with Mexico would not be of great help in this endeavor, and if I can give an assignment to an academician here, I think if you and some of the people at ODC, and some of the AID people talk about what could be done, I think we could end up with something that would be very constructive.

Father HESBURGH. It is a fruitful idea. My only little worry was, and the chairman will appreciate this, he has had such an awful time even getting a better bill than this through, and you have got to do all kinds of rigging to get it through, we all know that. The opposition to the bill, for example, is largely incredible, and I think ill advised, but, nevertheless, there it is, and if we add one more problem, he is going to say that is too much.

Senator SIMON. I am not suggesting that it be tied in with this bill.

Father HESBURGH. It is an integral part of the solution.

Senator SIMON. If I can take 30 seconds more, believe it or not, I will stop.

Father Hesburgh mentioned Central America. I could not help but notice an item in the New York Times. President Duarte of El Salvador, who now, we hope, is at the point of starting to bring more stability to that country, happened to come to Notre Dame and was in your class, because his father won a lottery ticket in El Salvador. Right now the United States offers 391 full scholarships in all of Central America. The Soviet bloc nations offer about 7,500 scholarships in that region. We should not depend on future leadership by winning lotteries. We should be offering scholarships to bright people in that area of the world. Nothing to do with this bill, but I wanted to get that plug in.

Father HESBURGH. Thank you.

Senator SIMPSON. Thank you, Paul, and this is very important. You have some serious questions of witnesses in these next 2 days. Some will be testifying about foreign aid: that creates more migratory outflow than we could have imagined and takes 20 or 30 years to slow down. You asked about that part of this bill that should take away the sting of discrimination: where you ask someone for identification, regardless of who they are. Knowing your probing and curious mind, this will become an educational process that you will be a very important part of, and I thank you.

Well, thank you very much.

Father HESBURGH. Thank you, Senator, and good luck this time.

Senator SIMPSON. Thank you very much. I appreciate that.

Now, our next two witnesses on the panel, Austin Fragomen, attorney at law and professor at New York University, and Wade Henderson, legislative counsel of the American Civil Liberties Union.

It is a pleasure to have you both here, and I welcome you to the subcommittee. We do have the time constraint, and it is nice to see you both. So if you will please proceed in order of the agenda, Mr. Fragomen, please.

STATEMENT OF PANEL CONSISTING OF AUSTIN O. FRAGOMEN, ATTORNEY AT LAW AND ADJUNCT PROFESSOR, NEW YORK UNIVERSITY; AND WADE HENDERSON, LEGISLATIVE COUNSEL, AMERICAN CIVIL LIBERTIES UNION

Mr. FRAGOMEN. Thank you very much, Senator Simpson.

First, I would like to thank Senator Simpson, Senator Simon for making this opportunity available to me to present my views at these hearings. Of course, we all look forward to a comprehensive immigration reform and revision of the immigration selection system as well as the issue currently before us. The delays are inordinate in various categories, but I can well understand the committee's concern that tie those commitments to the future.

I am particularly delighted in reviewing the new bill, S. 1200 to see that the section dealing with repatriation of students was deleted, notwithstanding the liberal waivers which was supported by the subcommittee.

I am further delighted to see that there is a deletion of the Frank type amendment which seems to have cropped up in the conference committee last session, but what I would like to do is address myself to the triggered amnesty, because I think that is the most significant addition to the new bill in terms of concept.

I can understand justification for the triggered amnesty, and certainly it would appear to be consistent with the deliberations, with the select commission, and it makes good sense from a policy standpoint.

However, the big problem I would foresee with implementation of the triggered amnesty is that it requires a great deal of confidence in the Immigration Services' ability to enforce the Immigration and Nationality Act, and I am afraid that I just do not have quite as much confidence in the Immigration Service's ability to enforce.

Of course, enforcement, it seems to me to be a three-part process. First, you have to control the influx of persons on the border.

Second, you have to have effective control over persons who are physically in the United States from the point of entry to the point of departure, and I would say that the third part of the process is, first, sanctions, which are an important ingredient, but I do not believe that sanctions by themselves would be the centerpiece of an enforcement program. And I believe this because there are already too many undocumented aliens in the cash economy. They will be very difficult to detect, and employers will not have official records in the first place. You have fourth amendment restrictions on enforcement by the INS. They cannot just go into places of employment and questions persons at random, and I believe that unless you can stop the influx of undocumented aliens and begin effective control over persons in the United States that what will essentially happen is that sanctions will not be effective by themselves, and the triggered amnesty will be delayed indefinitely.

I think that the Immigration Service possibly has the capability to stop the influx of undocumented aliens, but I do not know whether there is a national commitment to do so. With regard to computerization, the Immigration Service, in my mind, is a long way from being able to effectively implement a system that would have control over persons who enter as illegal immigrants and know whether they filed for immigration benefits, et cetera, and follow their status. I would strongly urge this committee to consider advancing the registry date as an interim measure, possibly to within 10 years of the date of enactment.

It seems to me that at a minimum that would make good sense, since I do not really foresee that the triggered amnesty will be triggered very quickly, and I would certainly hope that the committee would take a look at that. I have given a good deal of thought to some of these different factors the Commission could take into account in determining the immigration enforcement program had reached the level which would justify implementation of triggering of the sanctions, and I set those forth in my presentation in some detail and commend it to the committee's attention. Thank you.

[Statement follows:]

PREPARED STATEMENT OF AUSTIN O. FRAGOMEN

Senator Simpson and Members of the Subcommittee:

I would first like to thank you for again according me the opportunity to testify before your distinguished Subcommittee. Hopefully, by the next Congress we'll have a new law and we can move on to phase two - revisions of legal immigration.

Having served on the staff of a Congressional Committee previously, I am impressed by the commitment of members of this committee to immigration reform. Lesser men - and women - would have abandoned the mission long ago.

I have studied S.1200 closely and would particularly like to address myself to those provisions differing from your bill of last session.

I am keenly interested in comprehensive immigration reform which would include the immigration selection system, nonimmigrant categories, grounds of exclusion, and myriad other issues; however, since a thorough analysis of legal immigration reform is both time consuming and complicated, I welcome the concept embodied in S.1200 of deferring all legal immigration issues. As you know, I have vehemently opposed that provision of last Congress' bill which would require repatriation of foreign students and herald its deletion from this Bill. I believe that notwithstanding the waivers supported by this Committee, enactment of this provision would severely hamper United States multinationals who rely heavily upon talented foreign nationals not only to augment the inadequate domestic labor force in high technology and sophisticated research but also to help to expand United States business abroad through knowledge of foreign markets, cultural preferences and extensive personal contacts.

Modification of sanctions as set forth in S.1200 is a welcomed change. The elimination of complicated documentation requirements and the presumption for the employer of less than four persons recognizes the special problems attendant in imposing the same standards upon the small or occasional employer. Moreover, since the small employer has more intimate personal knowledge of the employee proving actual knowledge of unauthorized employment should not be an overly difficult task.

I have no problem with stiffer penalties but merely observe that enforcement will be the major deterent to violation, not severity of sanctions.

Since the 1970's when Chairman Rodino introduced the original sanctions bill, it has been alleged that sanctions would increase discrimination against ethnic communities - particularly the Hispanics. This concern exacerbated by the decision of the Supreme Court in Espinoza v. Farah Manufacturing Company, 414 U.S. 86 (1973), holding that the prohibition contained in the Civil Rights Act upon discrimination on the basis of race, religion, and national origin did not encompass "alienage". To protect against the potential of increased discrimination flowing from sanctions the Conference Committee in the waning days of the last session adopted the so-called "Frank Amendment" which would specifically outlaw discrimination based upon alienage. Moreover, Immigration Judges, who primarily preside over deportation and exclusion proceedings, would be charged with hearing claims of discrimination. I submit that this is unwarranted and unnecessary. There is no concrete evidence that sanctions will increase discrimination. If the applicant for a job position produces the requisite documentation and the employer follows the appropriate procedure both will be protected. Granted, in some instances documents will be difficult to obtain and substantial inconvenience and perhaps even hardship will be experienced by job applicants. But, the Social Security Administration, Passport Office and the Citizenship Section of the Immigration & Naturalization Service all have substantial expertise in issuing social security cards, passports, certificates of citizenship, duplicate alien registration cards, employment authorization, and the documents required to comply with S.1200 where primary evidence cannot be obtained.

To reduce the hardship resulting from delays in adjudication of such applications a system should be established where interim documentation would be issued to applicants for social security cards, passports, etc. during the processing phase and such interim documentation would be accepted conditionally until ultimate documents are obtained.

Moreover, the potential for discrimination could be totally obviated by the establishment of a tamper-proof social security card coupled with a toll-free number to verify the validity of cards and work authorization. This would be nothing more than an extension of the present social security card system, and could be phased-in starting with new card issuance. Civil libertarian objections do not seem to me to validly raise the spector of a national identification card system.

I would strongly support the secure social security card. It would eliminate the laborious documentation requirements the Bill would impose upon the employer, place the burden of establishing authorization to work on the government, eliminate concerns about discrimination, and simplify enforcement.

I support legislation prohibiting discrimination based upon alienage, but amendment of the Civil Rights Act is the appropriate vehicle, not adding an unrelated appendage to the immigration law. I note that possibly, no additional legislation is necessary, as there appears to be a significant school of legal scholars who believe discrimination based upon alienage is proscribed by original Civil Rights legislation.

It seems inappropriate to me to give aliens preferential access to the administrative law system to redress grievances. Aliens could allege discrimination based upon alienage before the Immigration Board and discrimination based upon race or national origin through the traditional process. Since the vast majority of claims are unfounded, subjecting the employer to two actions would be costly and unnecessary. Finally, the Immigration Judges are not trained, acclimated or equipped to hear discrimination claims, whereas hearing examiners of the Equal Employment Opportunity Commission have extensive experience.

The most controversial aspect of S.1200 is undoubtedly triggered amnesty. Certainly, the conceptual basis of postponing amnesty, until the influx of undocumented aliens has been substantially reduced is logically sound. However, I believe that many years would pass until we were ready for amnesty -

and that would be unfortunate. I have long felt that sanctions are a necessary weapon in the arsenal to combat undocumented aliens. However, I have never believed that sanctions would have a significant impact upon what I view as a complex socio-economic problem. Comprehensive law enforcement by the Immigration and Naturalization Service will determine whether the influx of the undocumented can be curtailed. First, we must effectively seal the border with Mexico, if we truly have a commitment to stop illegal migration. Secondly, there must be a sophisticated computerized entry and departure system. When a person enters the country as a nonimmigrant, name, address in the United States, and other vital information concerning visa classification and expiration date would be placed in the computer. When an extension is filed, status changed or any other action taken, thereafter, it would go into the computer. When the alien departs, it would be noted. Printouts listing possible overstays would be produced and they would be pursued.

Granted addresses may be contrived, the overstayed alien may disappear but immigration inspectors at the point of entry could verify addresses when suspicious before admitting the alien.

Once entry control is in place, then sanctions will become important.

There is no doubt that the combination of border enforcement, entry control and sanctions will significantly impact upon undocumented aliens.

However, I would suggest that this would be a lengthy process and I would not reasonably expect discernible results in less than three to five years.

I would urge the Committee to consider advancing the Registry date in the interim. As you know, that date presently stands at June 30, 1948. I would recommend advancing the date to within ten years of enactment of S.1200. Thus, persons who have been continuously physically present in the United States for ten years or more would be eligible for permanent resident alien status under the Registry provision. I feel particularly strongly that this is necessary since suspension of deportation is practically unavailable as a form of relief after restrictive interpretation of the Supreme Court in such cases as Chadha v. INS, 103 S.Ct. 764 (1983) and INS v. Phinpathya, 104 S.Ct. 584 (1984).

As to those events which could occur which would lead a Presidential Commission to make the finding necessary to trigger amnesty, I would recommend a totality of events test rather than attempting to look to just one key factor. Such events could include the following:

1. Number of apprehensions. But one must realize that increasing the number of enforcement officers will for a time most likely increase the number of apprehensions. Thus, this figure must be viewed in relation to the number of law enforcement officers. Also, computerization will be necessary to ferret-out the repeating violations so that an accurate number can be calculated.
2. Number of overstays. Once the entry and exit process is computerized, the number of overstays should be ascertainable.
3. Number of visitor visa issuances. If the enforcement program is successful, the number of persons applying to come to the United States should decrease since potential visa abusers will be discouraged from applying.
4. Experience with sanctions enforcement. As enforcement becomes a credible deterrent, the number of undocumented aliens apprehended through factory surveys, review of personnel records, and other employment-related enforcement techniques will decrease.
5. Number of undocumented aliens applying for social service benefits. Many state and local social services such as welfare, rent subsidies, medical assistance, hospitalization report participation of undocumented aliens to the Immigration and Naturalization Service. Expanding such reporting would lead to useful information concerning the impact of sanctions. For instance,

loss of jobs by a great number of the undocumented may increase participation in welfare programs, whereas participation in subsidy programs may decrease.

6. Number of undocumented returning to their homeland. The ultimate test of the effectiveness of enforcement is whether undocumented aliens return home after finding opportunities in the United States evaporate. Even if presently employed undocumented workers are exempted from sanctions, inability to obtain new employment should be manifest by a rate of attrition over a period of time.
7. Unemployment rates of indigenous work force. The consequence of effective enforcement will be to make available jobs for persons in the domestic labor force. Since undocumented workers tend to gravitate toward certain types of occupations in selective geographic areas, the availability of these jobs for persons now unemployed should result in a decrease in the rate of unemployment.
8. Incidence of fraudulent visas, visa petitions, and passports. As the ability to obtain employment in the United States diminishes, the incentive for aliens abroad to obtain fraudulent documents or to attempt to gain entry into the United States by fraudulent means should decrease. Immigration and Naturalization Service and the Department of State keep statistics on the incidence of fraud.

No one of these factors standing by itself would support an unequivocal conclusion that the enforcement program was sufficiently effective "to control substantially illegal entry of aliens into the U.S., to prevent and deter substantially violations of the terms of entry and to eliminate substantially the employment of unauthorized aliens in the U.S."

However, the totality of information from disparate sources would converge toward a supportable conclusion.

Finally, I would like to briefly comment upon the bar to adjustment of status for aliens who have violated the terms and conditions of their immigration status. Determination of technical violation of status can be exceedingly complicated because the Immigration and Naturalization Service does not have definitive standards to deal with the myriad situations which can arise.

I believe that the whole issue of adjustment of status bars thereto, and immigrant visa processing are in need of detailed analysis and should await review and revision of the legal immigration system.

I thank the Committee for affording me this opportunity to share my views. I assure the Committee that I will continue to exert my efforts in helping to achieve long overdue immigration reform.

Senator SIMPSON. Thank you very much.

Now, Mr. Henderson.

Mr. HENDERSON. Senator Simpson and Senator Simon, thank you very much.

It is a pleasure to be here with you this morning to present the views of the American Civil Liberties Union on immigration reform legislation.

The recent congressional debate, we think, makes clear that immigration legislation arouses intense passions from many directions. However, we also acknowledge that there are substantial civil liberties and civil rights interest in the immigration debate which can only be advanced through the enactment of legislation.

We think it is urgent to seek a national consensus on immigration which will deal with the problem of million of undocumented workers, and which does so in a way that is consistent with our national commitment to equal protection and nondiscrimination and respect for human and civil rights.

Now, in the past the ACLU has opposed specific legislation because we believe that employer sanctions provisions posed a threat to civil liberties which would inevitably lead to discrimination in hiring and would ultimately be unenforceable. We have also objected to the provisions relating to political asylum, because in previous bills we felt they would have violated the rights of those seeking political asylum.

And finally, we have expressed our grave concern in the past for the American Civil Liberties Union's opposition to a guest worker program. We hope all involved will take a fresh look at the problem and meet the objectives we all share.

Now, we have taken such a look for ourselves. We are pleased to note that at least in two key respects, S. 1200 provides improvement over the immigration bill of the last Congress. First, S. 1200 focuses on controlling undocumented migration to the United States. The decision of not to address student immigration issues is a positive one, and your proposals not to change the laws affecting political asylum is most effective. And we think removing criminal sanctions is a positive step in recognizing some of the ill effects of a sanctions program. However, in other significant respects, S. 1200 contains provisions which would not permit our support for the bill at this time. Now, we are particularly distressed by the legalization provisions of S. 1200. The delayed implementation of legalization, which would be triggered by the findings of a new Presidential commission, would be a potential nightmare. Given the horrendous plight of the undocumented immigrants, we think such a delay of such a program is simply unwarranted and unjustified. We also believe that in all probability, the ability to establish the kinds of specific findings that would be called for under the bill by the Commission simply cannot be accomplished. Currently, there is no way of effectively assessing the rate and flow of undocumented migration to the United States. The ability to determine that such migration has been stymied or brought under control, we think, is a matter of impossibility. And second, Mr. Chairman, we recognize that if a legalization program were to be established under the bill, and done so immediately, that obviously new legislation must also, as a practical matter, contain some provisions which would deter employers and others from simply continuing to hire undocumented workers, or encouraging such workers to come to the United States.

Now, in the past we have proposed sanction provisions contained in the legislation, and we must continue to oppose such procedures now. We do so on the ground that they would lead inevitably to discrimination against some Americans. We know, for example, that under the current ID provisions and employer verification procedures under the bill the President would be given discretion, through the Attorney General, to establish findings that would lead, perhaps, to the establishment of a so-called tamper-resistant Social Security card. We think that the debate last year on the question of employee worker verification and the consensus was achieved on those issues in both Houses in something the committee may wish to take note of in reviewing those procedures to determine whether they might be amended in some way to guard against those concerns.

Third, and to wrap up, if I can, we express some concern over these serious consequences to civil liberties of the kind of Guest Worker Program which is proposed under the bill. The open-ended nature of such a program is one where we would have serious problems, because we believe that it would lead to some degree of discrimination and the loss of rights to all workers in affected industries. We would note that the bill does call for the establishment of a commission to assess when the legalization program might be implemented. The justification for such a program last year hinged on a stronger sanctions component, and the immediate implementation of the legalization program. We believe that such criteria, indeed, do not justify the current open-ended nature of the program as proposed in the bill

Thank you very much, Senator.

Senator SIMPSON. Thank you very much, Mr. Henderson.

Mr. Fragomen, you have broad experience as a practitioner, writer, and teacher in the field of immigration law. If you could briefly share with us your views as to the principal causes of illegal immigration, and your thoughts on the most effective means to address those problems.

Mr. FRAGOMEN. That is a most complicated question. I guess that my basic thought in terms of the root causes of the problem is the tremendous disparity in the standard of living, really, along the Mexican border and the disparity between the standard of living and job opportunities in the United States, Mexico and South America, which obviously draws less advantaged people into the United States.

Now, the problem is, I think, the whole concept of sanctions are predicated upon a fairly high level of good faith compliance by employers in the United States. If employers flagrantly violate the sanction proposals, they do not maintain any records whatsoever, they do not record employees even as existing. The present situation with the so-called cash economy, I think the problem is that these sanctions would be ineffective.

Therefore, I think the only way you can really control the illegal migration is through border enforcement and entry control over nonimmigrants. Once you have done that, then I think that sanctions can be very effective, but you have to stop the flow first. But I would be in favor of severe penalties on exploitation and stiffer penalties for violating laws regarding employment, and I would be very much in favor of implementation of the present laws dealing with fair labor standards and things of that sort.

Senator SIMPSON. We are all aware that the answer to illegal immigration rests with increased border enforcement, and increased labor law enforcement. This bill calls for an increase in the INS budget to $840 million a year. This bill calls for 700 new border patrol positions, 500 new interior enforcement positions, administrative support staff, legal positions and, oddly enough, no one objects to that. At least they keep saying that, yet without any legislation this will lead to more intrusions into the workplace and more harassment. I do not know how that escapes the attention of people who continue to call for increased enforcement at our border and internally. That is a very common cry. Where that leads is more operation jobs and more intrusions into the workplace. A situation without any legislation will lead, I believe, to the ultimate discrimination—that where employers say they are not going to hire anybody who looks foreign. I continue to hear it used. A total irony to me but, nevertheless, one that we will deal with and, hopefully, patiently to see if we can resolve it. But at some point we must have things in place because when we give amnesty, people will not come forward. I will wait. They are going to do it again. They have got to do it again because they have not got any law enforcement in this country. So I am going to get in there, and work on this problem.

Let me ask you this. What do you believe is likely to be the experience in this country with the legalization program, with the initial contacts, where the illegals will come principally through the voluntary agencies? Do you think we will experience them in coming forward more or less than expected? Are there other organizations that might be effective in overcoming the fears, the legitimate fears of the illegal aliens, eligible aliens, who are concerned about the Government's intention, true intentions with regard to legalization?

Mr. FRAGOMEN. I think it is an excellent approach to go through third-party legalization, and I think a third-party legalization program would be quite effective if you utilized that approach. As to other organizations, I suppose that one could expand the base somewhat from just the traditional voluntary agency and to deal with, for instance, welfare organizations or some of the more substantial ethnic organizations that work within the community. I think an analysis would have to be done as to what within each ethnic community, as to what ethnic organizations are capable of providing this service. But certainly I think the experience will be far more impressive than it has been in Canada, Australia, or other countries.

Senator SIMPSON. Let me ask you two or three more questions and then we will go to Senator Simon.

May I direct this question to you, Wade. I note your continued opposition to proposals for a secure worker verification system. That is not new and you, sir, are a very articulate spokesman, and

I have thoroughly enjoyed our several years of discussion on this issue.

Given the exclusive notices to Congress and the advanced appropriation funds that are in this bill before a new system can be put in place, what is it that the ACLU objects to? Would not these provisions provide an opportunity for full debate of the new system before any new system would be implemented?

Mr. HENDERSON. Senator Simpson, again you are correct in addressing our current posture on the worker verification system. I think you are also correct in noting that certain protections may have been built into the bill in current form. However, in two key respects, those protections are inadequate.

In the first instance, the bill would allow the establishment of a temporary existence of a Social Security card without review or approval. The notion that a Social Security card can be made more secure, we think, has been explored carefully over the many years of the Select Commission's deliberations and subsequently was specifically examined by the General Accounting Office to determine whether such a card could efficaciously be established. Now, the findings of that GAO report would suggest that it is simply a matter of impossibility to establish a more explicit social security account card, in part, without first purging the entire system of data which has been accumulated over many years. The cost of such a system, we think, is prohibitive. But, more importantly, we do not believe in all actuality that such a system can be imposed. That is one concern.

The second concern we have here relates to the ability to explore so-called experimental programs during the early years of the verification system. Again, the President and his authority through the Attorney General is given the ability to explore programs such as proposed telephone verification systems. Again, programs that are predicated on the use of the Social Security account number for some degree of reliability. We do not believe that those systems can effectively be established. We do believe that they do require explicit Congressional approval, and we think the ability of Congress to regulate the process, to express its principle of approach is one that must be dealt with more firmly to be effective.

Senator SIMPSON. You state, as I hear you, that employment discrimination is distinctly possible and even inevitable if the employer sanctions are approved, yet you object to the worker verification system that most immigration experts such as Father Hesburgh and many others, assure us will eliminate the discriminatory potential. I do not understand that. When do you receive a more positive and protective position by proposing some politically feasible alternatives? I never hear that.

Mr. HENDERSON. Let me approach it in two ways, if I can.

First, we have never opposed documents currently in position for worker identification verification. We have always said that some form of driver's licenses, et cetera, are permissible. We have opposed the establishment of new forms of identification for reasons I have already addressed.

Second, we do not see the alternative sources that you have proposed, the worker sanction scheme, or a continuation of the present enforcement mechanism which, you believed, it carried to the logical extreme, would increase the amount of discrimination against the selected American citizens and authorized workers.

Quite frankly, we think the two will work in conjunction with one another to produce precisely that result. We notice under section 287 provides a broad range of statutory authority for the immigration authorities to carry out programs as they deem appropriate. We also note that the Supreme Court decisions such as *United States* v. *Oliver*, *INS* v. *Delgado*, all of which go to essential fourth amendment protections, that there are no inherent restraints on Immigration Service authority.

We note under the regulatory scheme of the Service, the computer matching program, that attempts to ferret out illegal use of social services, operations jobs would continue to operate notwithstanding the taxing of employer sanctions in the bill.

Senator SIMPSON. I am interested in your comment about the consensus.

You talked about a consensus in the House and Senate opposing the national ID card. When someone brings that up, I say what is new? We never had a proposal for a national ID card. Never has been, never will be a part of the proposal. It is a marvelous thing to bring forward but the Senate has never discussed it in any way. In fact, the consensus of the Senate was a more secure system was necessary. There were no ID card amendments in the Senate debate, none, except the one that simply inserted the Congressional Review, and that was a thoughtful response from Senator Hatfield.

So I want the record to clearly show, and somehow it does not, not once has a national ID card ever been a suggestion of the U.S. Senate.

Just one more question and then we will go to Senator Simon.

The ACLU has a long record of supporting a very broad legalization program. I admire you for that. However, you consistently oppose enforcement measures that would allow us to conduct such a program. So other than increased enforcement of current labor laws, which nearly everyone agrees has been a toothless exercise, how would the ACLU recommend that we convince a skeptical American public that one legalization program will not beget another?

Mr. HENDERSON. I think you have raised a series of important questions in your last question to me. I would make two observations.

First, you noted correctly that very few organizations will oppose increased funding authorization for new positions, new equipment, and upgrading the quality of enforcement capability by the Immigration Service.

Second, I think it is important to note that when there is a balance and a respect for the fourth amendment rights, the civilian constitutional rights of the enforcement scheme under your bill, that such enforcement will help to mitigate what we believe to be the ill effects of a more aggressive enforcement program at the border.

One approach, we believe, a helpful one in an attempt to eliminate the exploitation of foreign workers in the United States. We do not believe that employer sanctions alone offers an alternative to that approach. In fact, we do not believe it offers an alternative at all.

The question is not whether it is an either/or proposition. Either we have employer sanctions on the one hand and, quite frankly, we will have both. The worst effects of both, unless we also have a concomitant balance with respect to the fourth amendment protections that will be needed to ensure that these programs will be carried out effectively.

In the case of sanctions, we do not feel that under the provisions of the bill that that can be done.

Senator SIMPSON. Senator Simon. After your questions, I will introduce Senator Denton.

Senator SIMON. First of all, I appreciate the testimony that both of you provided. But it seems to me that two key issues are, one, how do we get Mexico to really cooperate in the enforcement at the border, and that, I believe, can come only with some economic cooperation program.

The second, both of you have just touched upon, and that is the system of identification. I have not read the GAO report that you referred to, Mr. Henderson. Does that report say that there is no way of getting an ID card, a Social Security card that you get voluntarily?

Mr. HENDERSON. It does not make a definitive characterization which would suggest that a more secure card would never be accomplished. It does raise serious concerns about the efficacy about the card. One is a financial concern. I consider that, however, secondary. Several million dollars would be needed to develop such a system. But, more importantly, it also suggests that the kind of data that would be needed to effectively establish a secure system would require purging of the existing data.

The Social Security account number is now predicated on voluntarily provided information. Most recognize that there has been already a degree of fraud in some instances in generating information around these documents. To rely on that data, in turning that data into a new and secure system, would incorporate an inherent flaw and that, I think, is an essential finding of the GAO study.

Senator SIMON. Well, let us bring it down to what you say when Jose Lopez wants to get a Social Security card that he can use to identify himself as an American citizen. What you are suggesting is that we would have to tighten up on how we issue Social Security cards.

Mr. HENDERSON. I would make two observations.

To answer your question specifically, the answer is yes, that there would have to be a more definitive approach on ensuring that the data incorporated in the new system, that the system has been cleansed, and it was followed, found, and could be used for the kinds of purposes that you alluded to.

But my second response is that it would seem to me to be inconsistent to use a system to establish the right to work. We believe, in connection with workplace considerations, under the current Supreme Court of *INS* v. *Delgado,* we believe already that the use of ethnicity, appearance and foreign language considerations are already taken into account by the Immigration Service, and carrying out the existing enforcement schemes under current law. And such practices, although discriminatory on their face, have been upheld not to violate the individual's fourth amendment rights.

We think under the existing statutory provisions of the current law, there indeed is a broad authority that allows the Immigration Service now to engage in certain forms of selective questions, stopping an identification and search and that kind of enforcement scheme, we think will be reinforced.

Senator SIMON. Mr. Chairman, unfortunately, I have another meeting I have to get to.

In your opening statement, Mr. Henderson, you said let us all take a fresh look at this thing. I think that is really needed. I hope it can be done. I hope you can come up with some instructive answers that do protect against discrimination, against civil liberties violations. If we can do that, everyone is the winner. I am not going to be able to stay here, Mr. Chairman, but I want to assure you of my continued interest on this subject.

Senator SIMPSON. I think that is great. And let me share with you that that fresh look that you have described has been done by five Presidents and four commissioners, and is not going to get any fresher. It is the same old stuff. Fascinating.

It is great to have you.

Jeremiah Denton, the Senator from Alabama, a new member of the subcommittee, and a person who serves with me on two committees, Veterans Affairs and Judiciary. And I have come to have high regard for him. And his tenacity and determination is well known to the country before it became well known to the Senate.

Great to have you here.

OPENING STATEMENT OF JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator DENTON. Thank you, Mr Chairman.

Your leadership has been appreciated on the Veterans Affairs Committee, and we have served on other committees as members. And as everyone else, I have nothing but respect for you indeed

With this bill, which you got through last year all the way up through conference, you have shown your typical perseverance, patience, and compassion, mixed with a realism of our national interests. Those things, coupled with your native common sense of humor, have made you a famous man here. You are now the whip. They have a nickname for you on that.

Senator SIMPSON. What is it?

Senator DENTON. You told me, but I cannot repeat it here. You are one of the most valuable men in this body, and I will be very interested in reviewing the outcome of your efforts to shepherd through changes in last year's immigration bill. Most of the time I will be conferencing with you on the side because, as you know, we also have a number of subcommittees that we need to be doing things with. I want to express my gratitude of being on the committee, and you have my prayers in working toward a solution.

It seems that you run into Solomon type decisions too often, and we on the floor and those in the press and media can jump on you for not having cut the baby in two or giving it to the wrong mother. There are so many issues like that. I will be consulting with you on the side, as well as attending as many of these meetings as I can, Mr. Chairman.

Senator SIMPSON. Thank you very much, Jerry, and that is a very helpful overture. I thank you very much, Mr. Henderson and Mr. Fragomen, and indeed I think the part that is so fascinating to me that when we even strongly disagree, I deeply apreciate those opportunities as they come across the board to sit down with people in private and say what is it we ought to be doing, and get some helpful responses. It is when we can make those helpful responses public, we will begin to get our work done because they are always very good in private.

So, thank you very much again. It was very helpful.

Now, the final panel of the morning is comprised of Dr. Michael Teitelbaum, the program officer of the Sloan Foundation; Dr. Barry Chiswick, visiting scholar of the Hoover Institution, Stanford University; David S. North, director of the Center for Labor and Migration Studies, New Transcentury Foundation; and Dr Lawrence H. Fuchs, chairman of the American Studies Department, Brandeis University.

All of you bring special talents, and we will draw on your talents.

We will begin in order of the agenda, and I think that is you, Dr. Teitelbaum. And it is always good to hear your views in your pungent and thoughtful way. Please.

STATEMENTS OF PANEL CONSISTING OF DR. MICHAEL S. TEITELBAUM, PROGRAM OFFICER, ALFRED P. SLOAN FOUNDATION; DR. BARRY S. CHISWICK, VISITING SCHOLAR, HOOVER INSTITUTION, STANFORD UNIVERSITY; DAVID S. NORTH, DIRECTOR, CENTER FOR LABOR AND MIGRATION STUDIES, NEW TRANSCENTURY FOUNDATION; AND DR. LAWRENCE H. FUCHS, WALTER & MEYER JAFFE PROFESSOR OF AMERICAN CIVILIZATION AND POLITICS, BRANDEIS UNIVERSITY

Dr. TEITELBAUM. Thank you very much, Mr. Chairman.

I am Michael S. Teitelbaum, program officer of the Alfred P. Sloan Foundation in New York. I am testifying before this subcommittee in my personal capacity and at your request.

I have been asked to comment upon S. 1200, the Immigration Reform and Control Act of 1985, especially with respect to its provisions for legalization or amnesty for illegal aliens currently resident in the United States.

I understand, of course, that past proposals for legalization have proved to be highly controversial. Indeed, my reading of the past several years of debate is that legalization may well have been the most widely controversial element of the Simpson-Mazzoli bill, and that this provision contributed substantially to its ultimate failure in conference committee last year.

If I am right on this—and members of this subcommittee will have a far more informed view than I—it offers an interesting commentary on American political discourse and on its coverage by the media. Public discussion of the Simpson-Mazzoli bill concentrated not upon its legalization/amnesty provisions, which proved ultimately to be so controversial, but instead upon its proposals for sanctions on employers who knowingly hire illegal aliens. This apparently misplaced emphasis arose from the unrelenting and sometimes strident opposition to such sanctions expressed by a small number of politicians and lobbyists. Some of these claimed to represent the view of Hispanic Americans, although all public opinion polls of Hispanic Americans indicate great diversity of opinion on this subject. Despite this, much of the press coverage of the Simpson-Mazzoli debate blithely caricatured Hispanic Americans as "opposed to employer sanctions." Let us hope, Mr. Chairman, that future press coverage of such matters will be a better informed and more accurate description of reality, rather than a reflection of the loudness of a few spokesmen holding only one of diverse perspectives within the Hispanic community.

As I understand it, there were reasons of both principle and politics that underlay the Simpson-Mazzoli bill's proposed legalization of large numbers of persons who entered the United States unlawfully or who overstayed or otherwise violated the terms of their visas. The principled reasons were to regularize the status of persons who had lived for many years in the United States and thus had sunk deep roots of family and community in this society—the deep roots rationale. The argument here is that it would be inconsistent with American values to uproot such people and return them to societies from which they departed many years ago. A related reason for principled support of legalization was to avoid the need for a large roundup of a population that by general consensus numbers in the millions—the no-roundup rationale. Finally, a formal legalization was seen by some proponents as a way to wipe the slate clean by regularizing a social underclass for which the U.S. Government bears partial responsibility, due to past legislative and administrative weakness in immigration policy—the clean slate and underclass rationales.

In sharp contrast to such principled rationales, an important political reason for such a legalization was aimed at some who prefer to continue the regime of widespread violation of immigration law and therefore oppose all plausibly effective proposals to restrain it. Here legalization was seen as a political tradeoff or incentive for such opponents to support a legislative package offering very substantial benefits to those they claim to represent—the tradeoff rationale. In particular, legalization of the maximum possible number of illegal aliens has long been a major political goal of some Hispanic politicians and lobby groups

Issues of both principle and politics also underlay opposition to proposals for legalization/amnesty. One principled reason for opposition arose from concerns about equitable treatment. Thus legalization was opposed as offering significant rewards and benefits to those who had flagrantly violated U.S. immigration laws. Such persons were to be granted legal status, and eventual rights of citizenship, solely on the basis of their past willingness to enter the United States unlawfully or to violate provisions of their temporary visas. Meanwhile, long waiting lists of would-be immigrants who had chosen not to violate U.S. laws but instead to wait patiently through the months or years until their number came up, were to receive no such benefit. In this view, it would be inequitable for the lawbreakers to be granted legal residence and eventual citizenship, while the law-abiders would not—the inequitable rationale.

A second reason for principled opposition to legalization proposals arose from concern that such provisions would offer a powerful new incentive for further illegal migration to the United States. Such additional migrations would be undertaken in anticipation of easy access to fraudulent documents needed to establish eligibility for the legalization benefits, or in the reasonable expectation that once a mass legalization had been implemented, further legalizations could be expected. Thus, in this view, the legalization provision would serve to frustrate the principal goal of immigration reform proposals aimed at restraining illegal immigration—the increased illegal immigration rationale.

The political reasons for opposition to legalization came in both partisan and general policy forms. Partisan opposition, usually unspoken, arose from expectations that legalized illegal aliens would form a natural new constituency for liberal government income transfer programs, affirmative action preferences on the basis of race/ethnicity, and other economic and ethnic-based policies. More general political opposition arose from expectations that heavy fiscal burdens would arise for State and local governments upon the legalization of millions of illegal aliens currently ineligible for government services and income transfers—the fiscal burden rationale. This led to demands for 100 percent Federal reimbursement of all such additional expenditures. In the context of a $200 billion budget deficit and strident advocacy in defense of most other Federal expenditures, such an open-ended financial commitment became the ultimate stumbling block preventing final agreement.

What can we say about S. 1200's legalization provisions in the light of the above past rationales for support and opposition, based both on principle and politics?

First, despite the political damage the legalization proposals did to the Simpson-Mazzoli bill last year, the new bill retains much of the legalization provision. Thus it appears that the bill's sponsors continue to support the principle of a generous legalization in spite of the political costs.

Second, the bill embraces the deep roots rationale, allowing for full legalization for illegal aliens who have lived in the United States for only 5 years, that is, roughly the same residence period required before legal immigrants may apply for U.S. citizenship.

Third, the bill also embraces the no-roundup rationale for legalization. It provides for no large-scale enforcement sweeps to identify and deport existing illegal aliens, concentrating instead upon deferring the entry of such additional persons.

Fourth, the new bill incorporates a direct response to fears that a mass legalization would cause additional illegal influxes and demands for further mass legalizations and, at the same time, reduces the weight of the fiscal burden objection. It requires that the starting date of the legalization process not be initiated until a blue-ribbon commission certifies that:

> Programs of the Federal Government are in effect, and have adequate resources, to control substantially illegal entry of aliens into the United States, reduce substantially unauthorized employment, and reduce substantially visa overstays.

This provision is broadly consistent with the following major and unanimously adopted recommendation of the Select Commission on Immigration and Refugee Policy, chaired by Father Theodore M. Hesburgh.

> The Select Commission recommends that legalization begin when appropriate enforcement mechanisms have been instituted. The Commission believes that a legalization program is a necessary part of enforcement, but it does not believe that the United States should begin the process of legalization until new enforcement measures have been instituted to make it clear that the United States is determined to curtail new flows of undocumented/illegal aliens.
>
> Without more effective enforcement than the United States has had in the past, legalization could serve as a stimulus to further illegal entry. The Select Commission is opposed to any program that could precipitate such movement. Further, the absence of effective enforcement could lead to a low participation rate in the legalization program. Continuation and enhancement of enforcement efforts in this country should encourage many undocumented/illegal aliens to regularize their status under the legalization program. Persons found as a result of Immigration Service operations would be given the opportunity to apply for the program if they appear to be qualified.

I understand that some members of the Select Commission and its staff preferred immediate implementation of the legalization; as a result, the above language was written with a certain deliberate ambiguity, with some claiming that the Commission intended immediate execution. Nonetheless, to most readers some form of trigger mechanism would seem more consistent with the tone of the recommendation as written, especially its second paragraph.

To my mind, tying the implementation of legalization to the establishment of reasonably effective immigration law enforcement represents rational policy, good politics, and common sense. If an important goal of legalization is to regularize an existing underclass and start with a clean slate as a matter of principle, nothing is achieved if the underclass is immediately reestablished and the slate quickly sullied again by further or accelerated illegal immigration. On the political front, the Simpson-Mazzoli bill's provision for immediate legalization obviously failed to gain it the support of implacable political opponents of immigration reform, while it stimulated strong political opposition on the part of others, as discussed above. Thus, the addition of the legalization trigger would seem to be a sensible reaction to past political experience.

Moreover, the new provision offers those whose main goals are to legalize the maximum numbers of illegal aliens a good reason to reconsider what I understand are their plans to block or delay implementation of effective immigration enforcement measures, via the dilatory tactics and class actions that are by now standard operating procedure in the advocacy politics of U.S. immigration and refugee policy. The sooner reasonably effective enforcement can be certified, the sooner the legalization is implemented. The triggering mechanism is also likely to reduce the level of principled opposition to the very idea of a mass legalization, by offering at least some assurance that this will be a one shot rather than a long series of legalizations.

In short, I believe the legalization provision in S. 1200 is a sensible and humane proposal that offers the best available opportunity for obtaining approval of a large-scale legalization. I have two cautions about it that I would urge you to consider. The first concerns those illegal aliens who would meet the qualifications for legalization, but who are unlucky enough to encounter the immigration authorities before it is implemented. In such cases, I believe procedures should allow such persons to maintain their equity in the legalization, even if they must temporarily return to their home country until the legalization is triggered. This, too, is consistent with the Select Commission recommendation cited above, and could be achieved via minor amendment, report language, or regulatory procedure.

My other caution about this provision is that the Legalization Commission must be as unbiased and objective a source of assessment as is humanly possible. This Commission should not end up as a means of delaying legalization illegitimately—nor equally, as an illegitimate way to initiate legalization before reasonably effective enforcement measures are in place. For this reason, I would hope its membership would be viewed more as a judicial than as a political group—including, for example, a number of distinguished retired Federal judges whose past record of impartiality and fairness is widely recognized. To this end, it is encouraging that the bill requires that the members of this Commission be fully bipartisan and appointed by the President from lists submitted by the Speaker of the House and by the President pro tempore of the Senate—a three-key approach that should ensure some quality control.

I was asked to include any comments on other provisions of the new bill that seem to me to be of policy concern. These fall into two categories: temporary worker provisions, and enforcement adequacy.

The bill's provisions for an expanded temporary worker program, if I understand them correctly, seem to me to go much too far toward a policy of permanent dependency upon such imported labor. The overwhelming evidence from past experience, both from this country's bracero program and Western European guest worker programs, is that temporary workers from low-income countries are more likely than not to become a permanent work force, and also that "temporary worker" policies have the effect of stimulating and facilitating long-term migration flows, often of the illegal variety. Certainly there is general agreement among immigration experts that the bracero program of 1942–64 was an important factor in initiating the now large-scale illegal immigration from Mexico—this is one of the few areas of near unanimity among experts in Mexico and in the United States.

Thus recent history both here and in Europe teaches us that temporary migrations are more likely to prove permanent than temporary, and that they are far easier to start than to stop. This is especially true in cases in which there are enormous economic incentives favoring continued movement and more permanent residence, such as are provided by the high-wage U.S. economy when compared to those of the countries of origin. As but one crude indication of such differentials, consider that GNP per capita in El Salvador is 95 percent lower than that in the United States, according to the World Bank.

Due to past nonenforcement of immigration laws, some employers in limited sectors of the U.S. economy have become dependent upon a continuing stream of low-wage illegal workers—examples include fruit and vegetable growers in the Southwest; low-margin garment manufacturers in Los Angeles and New York; and restaurant/hotel and construction operators in the Southwest. One economist has described the dependency of such employers as analogous to drug addiction. Another way to put it is that such employers have been receiving a substantial labor subsidy, on which they have based future business plans. As it well known, it is always difficult to move away from dependency upon drugs or economic subsidies. For this reason, I believe there may be some modest justification for a time-limited transitional program that allows such employers to gradually reduce their dependency on illegal aliens. But to the extent policy encourages continuing dependency, it cannot be justified in the national interest, though it might well serve the interests of those employers who take advantage of it, at least over the short term.

As to enforcement, I wish to emphasize that the workplace sanctions proposed in this bill can be only as effective as the seriousness with which they are enforced. The Western European experience with employer sanctions has been wildly misreported by domestic opponents of such provisions, usually by selective quotes of a few lines from the 1982 General Accounting Office report on this subject. I will be quite surprised if such selective use of evidence does not appear in some of the written testimony prepared for this hearing. For this reason, let me summarize succinctly the conclusions of most Western European governments as I understand them: None of the governments involved can imagine enforcing their immigration laws without employer sanctions. Where there have been concerns about effectiveness, the government response has been to strengthen rather than to dismantle the sanctions. Still, there are concerns in West Germany and France that these sanctions are not as effective as they could be, due to limitations on enforcement effort and the tendency of some judges to impose such small fines upon convicted violators that they can be treated as a normal cost of doing business.

My concern, Mr. Chairman, is that we not imagine that mere passage of employer sanctions will lead to effective deterrence in the workplace. The actual deterrent effect of sanctions will be determined not by their theoretical effectiveness, but rather in the real world of the enforcement effort—how serious, with what resources, with how many limitations imposed by fiscal or judicial restraints. Thus this subcommittee should expect to exercise continuing scrutiny over the issue of effectiveness long after passage of the present bill, if this occurs.

Finally, on a related enforcement matter, may I express concern as to whether the chronically starved and overstretched Immigration and Naturalization Service will have the capacity to limit fraud and abuse of the legalization program should it be adopted. The economic and other incentives for such abuse are large, and the current availability of fraudulent documentation in this country is remarkably easy. If such abuse proves to be widespread, legalization, even of the triggered variety, will prove to be a negative factor in enforcement of immigration laws. I hope, therefore, that this subcommittee will give very serious consideration to the adequacy of resources available for effective enforcement of the provisions of this bill, both within the INS and in other relevant Government agencies such as the Department of Labor.

A final comment: Mr. Chairman, as all Members of Congress are unhappily aware, the U.S. Congress is held in very low public esteem. Given the recent history of scandals, pork barrel and other special interest activities on the part of some members, some of this negative image is justified.

However, someone has to say that during the past 4 years of debate on immigration reform, Members of this House have proved able to rise above parochial and ideological considerations in the interest of reforms that clearly serve the national interest. They have diligently pursued reasoned and balanced proposals in a cautious and sensitive manner, in the full expectation that their political careers were unlikely to benefit and might well suffer as a result. In so doing, they took great care to avoid the excesses of xenophobia and racism that prevailed in all previous national debates on immigration policy, although resort to such appeals might have increased political support for adoption. While some have taken considerable flak from vocal lobby groups for their efforts, anyone who has read the remarkable series of laudatory editorials from national and local media around the country must acknowledge that their efforts have established them as respected leaders on the national scene. Meanwhile the opposition of other prominent Members of Congress, based on ignorance or on parochial economic, ethnic or partisan interests, have inflicted severe damage upon their reputations and credibility.

Cynics may doubt this, but it does appear that statesmanship on immigration reform pays handsome political dividends.

And with that, I will stop and express my appreciation for your attention.

Senator SIMPSON. Thank you very much.

Now, it is in the order of our agenda, Dr. Barry Chiswick, please.

Dr. CHISWICK. Thank you very much.

I am very pleased to be here, to be once again testifying before this subcommittee. Let me just say at the outset that although I am a research professor at the University of Illinois, at Chicago and a visiting scholar at Stanford University's Hoover Institution, I speak for neither of these institutions. I speak only for myself, and my comments are to be attributed solely to me, although I hope after they are heard, they will be shared by many others.

My research interest in immigration issues in general, and illegal aliens in particular, began nearly a decade ago when I served in 1976 as technical advisor to the Domestic Council Committee on Illegal Aliens, chaired by then Attorney General Edward Levi. This topic has been my primary research interest for the past decade.

The Ford administration endorsed the Domestic Council Committee's recommendations that employer sanctions should be enacted and amnesty should be granted. We are here today, a decade later, discussing the same proposals. I believe that employer sanctions and amnesty have not been enacted precisely because separately and jointly they are perceived as being contrary to the best interests of the American public. And I believe that this perception is correct. Rather than rehashing old stale proposals, it is time to bring fresh ideas to the issue. It is in this spirit that I offer the new policy recommendations with which I close this testimony.

This testimony must necessarily be a condensed version of what I have learned from my research and what I would like to convey to this subcommittee. A fuller version of the analysis and policy recommendations are to be found in my co-authored book with Pastora San Juan Cafferty, Andrew Greeley and Teresa Sullivan, "The Dilemma of American Immigration: Beyond the Golden Door," Transaction Books, 1983.

The most recent public focus on immigration has been with respect to illegal aliens. From the last days of the Ford administration to the present, each session of Congress has given serious consideration to the enactment of legislation to grant amnesty to illegal aliens living the United States, to impose for the first time Federal sanctions on employers of illegal aliens, and to strengthen enforcement at the border. The persistence with which the legislation is brought forward, the heated debate, the widely divergent support in the House and Senate, and the periodic changes in position of Presidents and Presidential candidates suggests that illegal aliens are a difficult policy issue.

Illegal aliens exist because workers are attracted to the United States by jobs provided by the economy and because there is an incomplete enforcement of immigration law by the Government. Illegal aliens impact on the labor market by decreasing the earnings and employment opportunities of some U.S. workers and increasing them for other U.S. workers. The size of the illegal alien population is believed to be large and growing. It has recently been estimated by 3 Census Bureau statisticians that there were 3 to 6 million illegal aliens residing in the United States in 1980. It is also estimated that half of these illegal aliens are Mexican nationals. Every indication suggests that the continued deterioration of the Mexican economy and political upheavals in Central and South America will be further spurs to illegal immigration. Yet, we know surprisingly little about illegal aliens.

There is a legislative stalemate in Washington. Too few resources are budgeted to enforcement for the Immigration and Naturalization Service, INS, to have any substantial impact. Yet, there is an unwillingness to publicly acknowledge this lack of will and offer amnesty. This public ambivalence has been quite obvious for at least a decade.

The legislative stalemate may not represent a lack of will, but rather may be interpreted as a rational short-run response to a policy dilemma. We want foreign workers, but not their dependents. We allow illegal migration but keep the probability of arrest and deportation high enough to discourage the entry of family members. Amnesty, of course, would allow erstwhile illegal aliens to bring their dependents—spouse, minor children, aged parents—to the United States. This would give them access to our system of free public education as well as to the generous welfare and social service benefits that were designed to help Americans disadvantaged through no fault of their own. The welfare benefits include Aid to Families with Dependent Children [AFDC], Food Stamps, Supplemental Security Income [SSI], and Medicaid. Because we want the workers but not the dependents, and we find it awkward to say so openly, we perpetuate a cat and mouse game between the immigration authorities and illegal aliens.

If this interpretation is correct, we need not be concerned with more information on illegal aliens. We prefer continued obfuscation of the issues to the embarrassment that clarification might bring. It is apparently better to let the monster sleep. As this subcommittee recognizes, the monster will eventually wake up, and more massive social and economic problems may be at hand—a large, restless and low-skilled illegal alien populations.

To put these matters in historical perspective, it is important to indicate that the illegal alien issue is not new. In this decade we celebrate the 100th anniversary of illegal aliens in the United States. The first illegal aliens were Chinese because the first barriers to legal immigration were imposed against unskilled Chinese workers in the 1880's. There was a racist fear of the "Yellow Peril," of hoards of unskilled Chinese workers flooding California and depressing wages for similarly unskilled whites. It is unlikely that the feared massive migration would have taken place even if there were no barriers. Perhaps more intriguing, data from recent censuses indicate that the descendants of the Chinese workers have achieved higher levels of schooling, occupational status and earnings than the descendants of the whites who, a century ago, believed the Chinese could never be anything but unskilled laborers.

In the 20th century, however, the main focus has been on Mexican illegal aliens. A cyclical pattern has emerged. During periods of political turmoil or economic slack in Mexico, the migration is northward. During periods of economic slack in the United States, the northward flow is slowed or stopped, and sometimes reversed. In the 1920's, during the recession following the World War I boom, in the early 1930's and during the early 1950's, the net flow may have been toward Mexico. These reverse flows have sometimes been generated by wholesale arrests and deportations of persons who "look Mexican."

Even in the 1980's, Mexican nationals form the bulk of the illegal alien population. The data on apprehensions indicated that 90 percent are Mexican nationals. But this statistic overstates the proportion of Mexicans in the illegal alien population. INS concentrates its resources along the Mexican border, perhaps, as some alleged, because it is relatively inexpensive to catch people sneaking across the border and deport them. In addition, many Mexican illegal aliens work in the United States only part of the year and they return to Mexico during the slack season. Since apprehensions are most likely to take place at or shortly after entry, this to and fro migration also raises the proportion of Mexican nationals in the arrest data relative to the stock of illegal aliens residing in the United States.

It is believed that about half of the illegal alien population living in the United States are Mexican nationals, and that the other half come from a wide range of countries and all parts of the globe. West Indians, Central and South Americans, East Asians, South Asians, Africans, Near Easteners, Europeans and Canadians are all represented among illegal aliens. Of the Mexican illegal aliens, about 70 percent originate in 6 States of Mexico's Central Plateau. This is a poor area which served as a battlefield during the revolutions and rebellions earlier in this century, and which has been passed over by whatever benefits emerged from the Green Revolution of the 1950's and the short-lived oil bonanza in the 1970's.

There are reasons why Mexico provides the largest number of illegal aliens. We share a border about 2,000 miles long which runs through wilderness areas. Where rivers form part of the border, they are often shallow and easy to cross. Hence, entry without inspection is relatively easy for Mexican nationals. Illegal aliens from most other countries either use fraudulent documents to enter the United States or have to violate a legal visa, such as working in violation of a student or visitor visa, or overstaying their visa. Increasingly, nationals of other countries are using Mexico and Canada for the purpose of surreptitiously entering the United States.

Ease of entry may be a necessary condition for illegal immigration, but it is not a sufficient explanation. After all, the border with Canada is as easy to cross as the border with Mexico, yet there are relatively few Canadian illegal aliens; less than one percent of apprehended illegal aliens are Canadian nationals. Nor are legal immigrants more numerous from Canada than from Mexico. In recent years, there have been fewer than 15,000 Canadian immigrants annually, while legal immigrants from Mexico have exceeded 55,000 annually.

The United States-Mexican border is unique. There is no other border separating 2 countries that differ so sharply in average income. The temptation to go north to strike it rich working as a busboy, a dishwasher, or fruit picker is just too strong to resist. Mexico's economy has not done well in the 20th century in spite of its abundance of natural resources. High fertility rates combined with falling death rates, particularly infant mortality rates, have generated large cohorts of youths. Development policy has focused on capital intensive rather than labor intensive sectors of the economy. The poverty and absence of job opportunities, particularly in the rural areas, have generated a massive migration to Mexico City, the border towns, and the United States.

Many Mexican farmworkers gained experience working in the United States in the bracero program. This was a contract farm labor program started in 1942 to augment war-time labor supplies and was terminated in 1964. As a result of the experience gained in the bracero program, hundreds of thousands of Mexican farmworkers had their appetites whetted for the good life up north. They, their younger brothers, their sons, became illegal aliens when the bracero program ended and other opportunities for legal migration were reduced. Indeed, in the face of a growing supply of immigrants from Mexico, the imposition of the numerical ceilings on Western Hemisphere immigration in 1968, and the country ceiling in 1977, reduced avenues for legal migration, thereby generating pressures for increased illegal immigration.

There is little solid data on the demographic or labor market characteristics of illegal aliens. The data on apprehensions suggest that they are predominantly low-skilled, young adult, age 18 to 30, males from Mexico. While it is undoubtedly true that the apprehensions data can be expected to exaggerate these very characteristics, it seems reasonable that qualitatively these characterizations are accurate. Illegal aliens tend to be unskilled in part because workers in higher skilled jobs may have more difficulty in masking their illegal status and in part because an occupational license, certification or union membership may be required. In addition, because of the existence of skills that are specific to the country in which they are acquired, apprehensions and deportations may be more costly for skilled illegal aliens than for workers with few if any skills. Thus, among unsuccessful visa applicants, or potential applicants, those with few or no skills have the greater incentive to attempt an illegal entry.

The skewed demographic composition of illegal aliens and the high rate of to and fro migration, particularly with respect to Mexico, are consequences of illegal alien workers leaving their wives, young children and aged parents in the home country. This does not arise from their preferences, but from the circumstances of their illegal status. Dependent family members are costly to move to the United States, particularly if illegal means are to be used. Once in the United States, the dependents may not confer the eligibility for welfare and social service benefits that legal residents may receive. Indeed, the dependents may increase the probability of the entire family being apprehended and deported. In addition, their presence makes deportation more costly.

If illegal alien workers were granted amnesty and could bring their dependents to the United States, the demographic characteristics of this population would change. The extent of to and fro migration would decline, the ratio of dependents to workers would increase and, because of the low skill level, the family members would be eligible for a variety of welfare—income transfer—and social service programs. In addition, the incentive for even more families to move north would increase under the realistic view that if amnesty is granted once, it will be granted again. Hence the case against amnesty.

But what about a more vigorous enforcement of immigration law? The trends have, if anything, been in the opposite direction. The number of permanent positions in the Immigration and Naturalization Service increased from 7,000 in 1960 to nearly 11,000 in 1979, a 60-percent increase. During the same period, however, the annual number of legal immigrants doubled from one-quarter of a million per year to one-half of a million. Non-immigrant admissions of aliens as tourists, students, et cetera, increased eightfold from 1.1 million to 9.3 million per year And the number of apprehensions of illegal aliens increased 14-fold from 70,000 to about 1 million. Clearly a tremendous strain has been placed on INS resources.

To try to close the floodgates, INS has concentrated its resources on border enforcement at the expense of interior enforcement. However, there is a revolving door at the border in which large numbers of illegal aliens are apprehended one night, to be deported the next day, to try again on a subsequent night. Except for deportation, there are no penalties imposed on illegal aliens, even those who are flagrant repeat offenders. But apprehensions and deportations at the border impose relatively little cost on illegal aliens, particularly those from Mexico. The cat and mouse game along the border increases apprehensions per million dollars of budget expenditure, but may have little deterrent effect.

What are the benefits of current policy? The benefits come in the form of the increase in income to the native population of the United States from a larger pool of low-skilled immigrant workers. An increase in the supply of low-skilled foreign workers depresses the wages and working conditions of low-skilled native workers, and this receives much public attention. What receives less public notice is that the increase in the number of low-skilled workers increases the productivity of complementary factors of production, that is, higher skilled workers and capital. Any factor of production is more productive the more of other factors with which it can work. A bulldozer on a road construction project is more productive if there are more workers to keep it running 24 hours a day, repair it when it breaks down, and redirect traffic away from the construction site. A scientist is more productive if there are assistants to clean the test tubes, run simple experiments, do bibliographic research, type manuscripts, et cetera.

The gains in income to skilled workers and capital from the migration of low-skilled workers are likely to exceed the losses to native low-skilled workers. This means that as a result of low-skilled illegal migration the income of the native U.S. population is increased.

Thus, I have outlined the policy dilemma. As a result of restrictions on immigration, there are a large number of people in the United States illegally, perhaps 3 to 6 million people. They are disproportionately unskilled young adult males from Mexico. Indeed, it is largely because of their illegal status that they do not bring their dependent family members. These workers are productive and they increase the income of the native U.S. population, although they increase inequality in the distribution of income in the native population.

On the other hand, if the illegal aliens brought their dependent family members with them, they would be eligible for a variety of welfare, social service, and educational programs. Since the workers are low skilled, their use of these benefits could exceed the increased income of the native population. That is, the increase in taxes needed to pay for these programs for the dependents of the illegal aliens might easily exceed the gains in income to the native population.

By legalizing the status of illegal aliens, they could bring their dependents to the United States and claim benefits from the variety of public programs that subsidize the poor, the young and the aged. And amnesty encourages further illegal immigration because of the realistic expectation that if offered once it will be offered repeatedly. Hence, amnesty is perceived as an unacceptable solution.

Strict enforcement of immigration law is also perceived as unacceptable. The costs of strict enforcement may be very high in terms of civil liberties and of resources devoted to enforcement activities. A greatly enhanced and better equipped staff of INS agents would be required to increase the effectiveness of interior enforcement as well as border enforcement, but would be more costly. Sanctions against employers who knowingly hire illegal aliens are frequently proposed, although for employer sanctions to be effective a national identity system, or registration, of one sort of another would be required. It seems inappropriate to compel employers to enforce a law that the Federal authorities show little will to enforce.

Employer sanctions are the equivalent of an employment tax. This tax raises the relative cost of labor, particularly for low skilled, high turnover jobs. The imposition of such a tax may further worsen the job opportunities of low-skilled workers legally in the United States, particularly youths and minorities.

But perhaps the greatest cost of strict enforcement would be the loss of the income the native population gains from the work of illegal aliens.

From the short-run perspective, the current legislative stalemate may be optimal given that we do not want a legal system that sanctions a two-class society—one eligible for welfare and social service benefits and the other not. We can view amnesty and a stringent enforcement of immigration law as polar approaches to solving the problem, but for different reasons they are viewed as too costly. The consequence of current policy, however, is the presence of a large and apparently growing segment of the population that lives at the margin of or outside the law. As this population grows, and as increasing numbers of children of illegal aliens are born in the United States, and hence are U.S. citizens, the political and social pressures will also grow. A policy that looks optimal in the short run may thus not be so attractive in the long run.

This discussion suggests that as a society we need to more clearly delineate our priorities and policy options regarding illegal aliens. A partial solution to the dilemma is to restore a modest guest worker program. To discourage temporary workers from evolving into permanent workers outside the regular immigration system, entry would be permitted only for the guest workers and not for dependents, the contracts would be for a short maximum number of months—say 6 months—and only for jobs with clearly defined seasonal patterns. Returning to the home country would be required before a worker could receive a new contract, and a limit might be placed on the total number of contracts that a worker could receive.

To induce compliance, two types of penalties could be imposed on those who enter the country illegally, who violate the condition of a legal entry, or who violate the terms of their temporary worker contract. One penalty would be a probation period during which a legal entry as a guest worker, visitor, student or immigrant is barred. The other would be detention of the illegal worker for a period of several months prior to deportation.

Under current policy, there is some probability that an illegal alien will be apprehended. But the penalty if one is apprehended is very low, particularly for Mexican nationals apprehended at the border. There is no deterrent effect from apprehending individuals who violate the law if there is no penalty when apprehended. Hence, current policy regarding apprehended illegal aliens has little or no deterrent effect, particularly regarding Mexican nationals.

Detention may be the only mechanism for reducing the extent to which the border is treated as a revolving door. Pecuniary fines are inappropriate for the low-income illegal alien population because they could not be collected. However, a fine in terms of time—detention—for several months would be costly to the alien and have a deterrent effect.

The major criticism of detention is usually expressed in terms of the high cost of incarcerating 1 million apprehended illegal aliens. But this exaggerates the problem. Because of the revolving door at the border, the number of illegal entries would fall. As a result, the same border enforcement resources would mean fewer apprehensions but would raise the probability that an attempted entry results in an apprehension, further discouraging illegal migration. Indeed, with the imposition of meaningful penalties, greater deterrence could be obtained even with fewer border enforcement resources. Finally, low-cost minimum security detention facilities could be constructed in rural areas near the Mexican border.

These policy recommendations will not end all illegal immigration. However, by providing both the opportunity and incentives for operating within a legal framework they offer a better hope than current policy, or the employer sanctions/amnesty features of the legislative initiatives of the past decade, of controlling illegal immigration.

Thank you for the opportunity to testify before the subcommittee.

Senator SIMPSON. Thank you very much, Dr. Chiswick.

Now, David North, please.

Nice to see you again, sir.

Mr. NORTH. Thank you, Mr. Chairman.

This body is again holding hearings on the question of illegal immigration and what to do about it, and again the committee faces an extremely difficult, painful problem made more so by a near total lack of data on the subject. Clearly we know enough to want to take some action, but more information would be extremely helpful. This administration and its predecessors of both parties have bemoaned the lack of data, but have done little to close the gap.

The Immigration Service, which is closest to the problem, has not been particularly helpful. INS literally has its hands on apprehended illegal aliens 1.2 million times a year, but it has not worked out a technique to estimate the number of people it apprehends as opposed to its excellent workload data on the number of times it arrests an illegal alien. Further, about 300 million times each year, persons enter the United States through INS facilities, and presumably something like 300 million times a year people leave the Nation through these same facilities, but INS cannot tell us much about those entering and can tell us nothing about those leaving.

My first suggestion today is that a strong, independent, highly credible organization, like the Bureau of Labor Statistics, be set up within the Immigration Service to collect and analyze data on these subjects. Perhaps the bill before the committee could be amended to authorize the creation of such a body.

My second suggestion relates to the proposed user fees for those going through the ports of entry. I like this part of the bill for two reasons: It will raise funds from people who use the facilities, which makes sense, and it can raise a lot of money quite legitimately and painlessly. Second, if handled right, these user fees can provide us, almost automatically, with a great deal of information on the flows of persons in and out of the United States. For openers, it could give us a sense of the net flows of persons in and out of the United States. If we knew that there were, say, 300 million arrivals a year and only 299 million departures, then we would suspect that the flows through the ports produced a net increase in the population of 1 million. This would be in addition to the net flows, illicit ones, between the ports.

On the other hand, we might find there were more departures than arrivals through the ports because EWI's, at the southern border, avoid the ports on their way into the country, but use them on their way out. It should be noted that Prof. Daniel Vining of the University of Pennsylvania has done the pioneering work in this area, seeking to estimate the net immigration by air by a similar method. He counts the excess of the airborne arrivals over departures and then subtracts out the legal immigrants and refugees—by air—and the residual is the estimated illegal immigration by air.

Let me make some specific suggestions in this regard.

First, change in section 102(a)(3)(b) the word "aliens" to "persons" thus making the user fees apply to all users of the ports. To distinguish between citizens and aliens—when we are dealing with about 600 million events a year—is both labor-intensive and not very helpful.

Second, the statute should require that all persons entering and leaving the country should pay user fees. In this way, we could secure some of the net data noted above.

Third, set up a tollgate approach with a schedule of fees designed to create both revenue and solid information. The Immigration Service, like most Government agencies, is better at counting money than people. Let us set the fees so that a particular coin indicates a particular movement. Something like this: charge pedestrians leaving a nickel; pedestrians arriving pay a dime; autos leaving pay a quarter; cars arriving pay a dollar bill.

Change would be available, but the fee would have to be paid in the units noted. At the end of the day, INS could put the money in separate containers for nickels, dimes, quarters, and dollars and weigh them, which would produce pretty good estimates of the number of arrivals and departures, or they could run the money through coin counting machines. A similar arrangement should be made—with higher fees, of course—for those going through the international airports. The fees should be higher for two reasons: it costs more to inspect people at airports than at land ports, and those who can afford a plane ticket are usually better off than those who cross the border by foot or in cars.

I said that substantial sums could be raised in this way. If there are approximately 600 million entrances and exits each year, which seems about right based on earlier INS data on the subject, and we levied fees that averaged, say, 20 cents each, that would produce $120 million a year, or more than 14 percent of the $840 million the bill seeks in authorizations for the entire Immigration Service for fiscal year 1986.

There will be objections, of course. Border retailers, people who make their living because they have opened stores near the border, will complain. The passage out of the country by citizens and aliens alike will be slowed slightly as they go through the tollgates and turnstiles. The introduction of this highly reasonable user fee will be attacked by some border State legislators, who will see it as more of a nuisance than still one more way to attack the deficit. These legislators are more likely to be from the northern than the southern border, where such fees are familiar. I should add in passing that local governments, in both Texas and Mexico, have long since discovered this revenue source. Further, an individual American, living in a white frame house near the bridge in Presidio, TX, has profited handsomely from his part-ownership of that bridge across the Rio Grande. Similarly, a Mexican national, a physician in Monterrey has the monopoly at Los Ebanos, another minor Rio Grande crossing, or at least did when I was last there. Should not the U.S. Government share in this source of income? Particularly when we can learn something significant at the same time.

Thank you for inviting me to testify.

Senator SIMPSON. Thank you very much. It is very helpful.

Now, Dr. Fuchs. Glad to see you, sir.

Dr. FUCHS. Mr. Chairman, I welcome the opportunity to testify on this bill and particularly on the proposed Legalization Commission.

On employer sanctions, I strongly endorse employer sanctions as the enforcement method most likely to be effective, humane and nondiscriminatory in curtailing future flows of undocumented aliens, although I wish we could begin the system with a more secure method of identifying those eligible for work. I endorse the grant of authority to the President to use counterfeit-resistant Social Security cards as an identifier, and the incorporation of stiffer penalties for violators of the law.

On temporary agricultural workers, I see no major danger of a large scale guest worker program in expediting the recruitment and hiring of seasonal agricultural labor, as long as strong labor certification procedures are retained. The bill is extremely generous to agricultural employers in providing them with a 3-year period in which they may continue to hire undocumented aliens on a phasedown schedule, and I urge Congress to resist any further lobbying by the growers for special privileges, lest the reputation of this legislation for balance and fairness be destroyed.

You have asked me to comment briefly on the Legalization Commission, which would be charged with instituting a legalization program upon deciding that measures to curtail the flow of illegal aliens are substantially effective. Mr. Chairman, the idea of the Legalization Commission represents a retreat from the much more straightforward and practical approach of simultaneity embodied in the Simpson-Mazzoli bill.

A legalization program simultaneous with the introduction of employer sanctions, or close to it, is desirable because it enhances overall enforcement by concentrating INS resources at the borders and ports of entry and on enforcing employer sanctions. It would be a mistake for the INS to expend resources in tracking aliens who have been in this country continuously for at least 5 years just when it needs to step up conventional enforcement to locate more recent entrants and to curtail future flows.

Enforcement will be aided by simultaneity because the sooner we begin a legalization program, the sooner we will have comprehensive information about the origins of illegal aliens, the routes they take in order to enter the country, their characteristics and impacts, and about patterns of smuggler use and visa abuse. Simultaneity is likely to lead to a more comprehensive, simple and cost-effective legalization program. It is in the interests of the United States, not just the aliens, to reduce substantially the exploitable underclass that lives and works among us and to put them into a position to upgrade their education and skills so that they will contribute much more to society than they do now.

Having said this, I still would like to make the Legalization Commission work, should Congress legislate it into existence. In trying to imagine how it might work under the best of circumstances, I became convinced that it is inherently a bad idea. It will complicate enforcement. It will contribute to a negative image for the INS. It will compromise the objective of a comprehensive legalization program. It will create a piece of Government machinery to make a judgment Congress has already made and can make again.

Let us imagine a best case scenario. The bill passes this year and employer sanctions are instituted in January 1986. More funds are appropriated to enhance enforcement. The President appoints the 16 Commissioners from the panel submitted by both Houses, and they are universally acclaimed as fair and high minded. Let us suppose that by January of 1988, a unanimous Commission decides that the new enforcement measures are substantially effective, that the legalization program should begin in April 1988, and that for the next 12 months, a majority of the illegal aliens who have been in the United States more or less continuously since January 1, 1980, apply for temporary resident status, with the prospect of applying for immigrant status 30 months later.

Under this best case, there would be a period of about 2½ years between passage of the bill and the institution of the legalization program. During that time, long-time illegal aliens who intend to apply for legalization will be picked up by the INS, including some who are respected in their communities. Deportation proceedings against them will be instituted; their lawyers will request and obtain delays; administrative review will become an even more burdensome resource issue for the INS than it is now; delays will stretch out easily into the legalization period and even beyond.

Human interest stories will receive captions such as "INS Tries to Deport Respected Alien, Father of Three," or "Houston Church Provides Sanctuary for Long Term Alien Seeking Legalization," or "Federal Judge Decides Alien Eligible for Legalization Despite Deportation Order."

The best case scenario is not a good one. And it does not take much imagination to portray a much less desirable scenario. The Commission may run into a serious difficulty in trying to determine criteria for assessing the substantial effectiveness of new enforcement measures. One obvious criterion—decreased apprehensions—would be unreliable. Apprehensions might go up as a result of economic circumstances in sending countries or as a result of more effective enforcement. If commissioners cannot use a statistical baseline, they will have to make a subjective judgment as to what substantial effectiveness means. "Substantial" in this situation means "ample" or "considerable." I would hate to have them quote me because I have said on several occasions that employer sanctions will not be substantially effective for several years because it will take that long to put a universal and secure employment eligibility system in place. It is possible that even a Commission composed of persons who support legalization will have sharp differences of opinion over whether or not the new measures to curtail illegal immigration are substantially effective.

I have a few other suggestions to make. I believe the 1980 date should be moved to 1981. I believe there should only be one status—that of permanent resident alien—to achieve a comprehensive and simple one-time legalization program. Even then, only persons who meet the civic requirements and the qualifying exclusions, and who are able to demonstrate that they have lived and worked in the United States continuously for at least 4 years would be eligible. At least with a simultaneous approach, we would be in a much better position to begin our large task of thoroughgoing enforcement under a consistent, unambigious immigration policy. We would have rid ourselves once and for all time of a de facto foreign labor recruitment policy made possible by the Texas proviso in the Immigration and Nationality Act, which exempts employers from any penalty for hiring illegal aliens and which has been an invitation to exploitation and corruption.

Mr. Chairman, if this Legalization Commission is created, I will do my best to help it become effective. But this is one Commission I do not think we need or should want. Thank you for asking me to speak my mind.

And congratulations to you for your persistence, fairness and openmindedness in dealing with this thorny issue of immigration.

As Father Hesburgh would say, God bless.

Senator SIMPSON. Thank you very much.

You indeed are candid, and your views about the Legalization Commission are very important, at least to me.

Let me kind of range through the panel with some questions, and again all of you say provocative things for our consideration. I appreciate the generous comments about legislators.

Dr. Teitelbaum, I appreciate your testimony on the subject of triggered legalization, and I understand your views and your reservations.

We want to assure more effective enforcement, but we do not want to impose impossible requirements.

How would you suggest that we make more specific the criteria that "substantial" control be achieved over illegal entry, unauthorized employment, and visa overstays?

Dr. TEITELBAUM. Well, Mr Chairman, as you may know, I am a demographer by profession, and I have an in-built preference for hard quantitative data and evidence. However, I must say that I do not expect that such a judgment could be made on the basis of such quantitative data.

The clandestine nature of the phenomenon with which we are dealing, means that it is essentially inaccessible to objective quantitative precise measurement. Moreover, I would associate myself with Dr. North's comments about the quality of the data in general in this field, quite apart from data on illegal migration.

There are approaches that would allow some form of quantitative data to be collected but, as I will say in a moment, I think, ultimately, what one needs is the wisdom and judgment that goes into a decision in any court of law or in any legislative deliberation. One possible source of data would be the kinds of surveys that Dr. Chiswick and others have recently been applying to known employers of illegal aliens, known because their names and their firms appear on official INS apprehension forms. He may have a comment on this. I have not talked with him about his experience so far, but it might be possible for such a commission to engage in at least exploratory conversations, if not quantitative surveys with such employers, to detect such a change in trends in their employment practices.

One could also look at apprehension data, though I suspect they have serious problems of interpretation. They should always be compared to the level of enforcement effort being applied, as is the case for any law enforcement data. I would emphasize that the Commission, if there is indeed to be a commission, should do some of its own data collection, and should not depend solely upon other Government agencies for preparation of data. Ultimately I think it would be a matter of judicious and fair and objective judgments of the kind, as I said, that any court of law must make on the basis of apparently convincing and conflicting evidence on both sides of the argument, often quantitative in form.

I should add, Mr. Chairman, that I doubt if we can rely very much on data about illegal immigration to be collected during a legalization. If the legalization is as chaotic as I suspect it will be, we are dealing with large numbers of people in a short timeframe. Temporary personnel, and often non-government personnel will be doing the data collection. Given such circumstances, most users of quantitative data would not give much credence to such data. Also, I hope that no one will take offense, but there are problems in general in the quality of Immigration and Naturalization Service data as a whole. So one would have some reservations about the quality in that respect, too.

Senator SIMPSON. Indeed, that is so. I agree, and certainly Dr. Fuchs has agreed that the Legalization Commission must be composed of people, and I believe your phrase, Dr. Fuchs, was fair and high-minded persons, people of fairness.

Do you have any thoughts on persons, not names or attributes as to those who might be selected for the Legalization Commission?

Dr. FUCHS. Well, I tried to go through this exercise and think about this, how to make it work, and there are categories of persons. I am nervous about each category except one. The first category of persons would be academic types who know the field of immigration. That would not be a way to go. Not because they are not fair and high-minded, but because they would give intensely different interpretations to some of the data that they were looking at and disagree on the significance of the data.

Another type of person would be a person who was a representative of different interests in the society, different constituency groups. And I am very nervous about that. I think that appointing persons to guard the interests of their particular group would be a great mistake. I come down to the U.S. Congress itself as a third category, and I ask myself, well, if I would appoint a commission of persons who voted for legalization from out of the U.S. Congress, with a chairperson from outside, a guardian of society type, such as President Ford, somebody like that, to give it a certain stature. Then, why not have Congress do it in the first place? If they have already done it and it was not, in my view, the legalization provision that did the very good Simpson-Mazzoli bill in; I believe strongly it was some other factors. You passed it twice. You held to an unpopular issue which is an extremely difficult one to get across, to explain why it is in the best interest of the United States, and not just a giveaway or benefits program.

It is extremely difficult to articulate that, but you did it, and you persuaded enough of your colleagues over in the Senate, and when it was challenged in the House, even though an election was coming up, it still won by a 38-vote margin on the amendment to kill legalization. You did it before and you can do it again. If you want to have a commission composed of persons who voted for it from both Houses, that would be the best way to do it. But, as I say, I do not see the need for that.

Senator SIMPSON. Knowing you as I do, Dr. Fuchs, you are pained by that idea. You see no necessity for it.

Dr. FUCHS. I do not. The only plausible explanation for it—there are two. One is that we cannot get the votes for the bill without it, and I do not agree with that, unless there is some new assessment that I have not seen, and the second is that it sends the very clear signal that this is a one-time program. And I am for that. I am for a one-time legalization, and I think that the best way to make sure that we have a one-time program is to do all of the things necessary to bring about effective appropriate enforcement, and I see legalization, as did the Select Commission, as essential to that enforcement effort. And I do not see postponement as necessary to accomplish any useful function. I see the Commission as another piece of Government machinery that, in this case, will actually delay and complicate the objective.

Senator SIMPSON. Thank you.

Dr. Chiswick, do you believe that the per capita income of those citizens and legal aliens who are resident in the United States will increase or decrease if those low-skilled illegal workers are included in the total of those who are resident in the United States?

Dr. CHISWICK. The income on a per capita basis, if you included illegal aliens, would be lower. The per capita income of the native population would be higher as a consequence of the illegal immigrant. But this does not necessarily mean that legalization would have beneficial effects. After a period of time legalization would grant the low-skill aliens and their dependent family members access to the income transfer system, and that is likely to have the effect of lowering the per capita income after taxes and transfers for the legal resident population or the native population.

Senator SIMPSON. You also state in your testimony a proposal to detain, even for a good period of time, illegal aliens who have been apprehended while entering in violation of the law.

Now, that is not a politically popular proposal, but other groups have mentioned that type of detenent, sometimes publicly, sometimes privately.

How would you make that proposal politically palatable? That puzzles me as to how that would ever be done.

Dr. CHISWICK. I do not find it so politically unpalatable. I have difficulty understanding those who do not find sympathy with it. I think we have to explain to people that we do have a problem, and that if we want to have security over our borders, control over who comes in and who does not, then we have to introduce a policy that has teeth in it. Current policy is a waste of resources. We are expending certain resources at the border, and most of those resources have no deterrent effect. What I am suggesting is a policy that would have a meaningful impact on reducing the flow of illegal aliens and as a result the number of people that would be apprehended would be much lower that what most might at first glance think.

As was mentioned by David North, the apprehension data show 1,200,000 apprehensions per year. The number of different individuals, as noted, is probably much less than that, and that is with no penalties if you are apprehended at the border. All studies in the economics of crime show penalties have a very significant effect in reducing violations. Where you do not have penalties, even if you have apprehensions, you have a great deal more violation of the law.

What I am suggesting is that a number of people that would in fact have to be detained is probably not all that large once it becomes recognized that if you are apprehended you will be detained. If you are apprehended a second time, your detention will be longer. If you are apprehended in the interior, the detention will be even longer. I am not talking about long periods of detention. Since most of the illegal aliens who cross the border are interested in seasonal or short-term employment, even a detention of 2 or 3 months could have a significant deterrent effect. These are not hardened criminals, so we would not need a maximum security facility, and that is why I use the term "detention."

Senator SIMPSON. Let us bounce over to David North. I might review that question and ask your response, Mr. North, with your background as a political scientist and a numbers man, shall we say, on the subject of how do we make more specific the criteria that substantial control can be achieved over illegal entry and visa overstays, any thoughts on that? What are your thoughts?

Mr. NORTH. I have two sets of problems, one of which is the period in between the passage of the law and the decision, even if the decision is made soon by a legalization commission. I worry about what happens in the labor market during that interim time, because there is a provision, as I read the bill, that continued employment of an illegal alien is not contrary to the law, but that a new hire would be, and that would seem to put the current employer of an illegal alien in a remarkable position, vis-a-vis that worker, "stick with me and you will be safer than if you move on and work for another employer," he could say.

I find that an anomaly, and if it is going to go on for a couple of years, I find that troublesome. As to the decisionmaking, I would suggest that if, in fact, the Congress does, despite the advice of this panel, go ahead with this Commission, that some thought be made as to creating a series of events that could be recorded so that you could get some handle on whether or not something had in fact been done in a substantial way to enforce employer sanctions.

It is a lot easier to create a set of ground rules, events, forms, reporting systems, beforehand than try to figure out what in fact has happened later.

At one point I had a conversation with INS after Operation Jobs, and they were trying to figure out what they had done. I said there is not much you can tell from this, but had you talked to me 3 months ago we might have devised a system so we had something to measure at the end of it, so I would suggest if you are really serious about that, you think of some techniques of setting up a system to give you answers.

Senator SIMPSON. I am interested in your thoughts about the establishment of an equivalent to the Bureau of Labor Statistics within the INS to analyze this immigration data. I think that is fascinating. I think that will be worthy of some further study, and I would hope that we might do something about that.

One of the objections that we have heard with regard to user fees is that they would result in the long lines and at the border entry and departure points.

How do you respond to that concern?

Mr. NORTH. I think a delay at the toll booth, a turnstile in the New York subway system, or on a turnplank, such as the one at the Delaware Memorial Bridge, where you have automatic gates, when you simply throw in a coin and away you go, I think the delay is absolutely minimal. You will have to slow down the car to some extent to be admitted into Mexico and Canada. You slow down slower before entering the United States. I do not think the delay would be significant.

Senator SIMPSON. Do you have any estimates of your own regarding the approximate sum of money that user fees might bring annually at the rates that you suggest?

Mr. NORTH. I did not work the nickel, dime, quarter, dollar, but I think you might suspect something like 20 cents on average.

Senator SIMPSON. Have you thought about the type of cost estimate that might be involved in collecting that? Do you see that as significant?

Mr. NORTH. I would see that as 2 or 3 percent. The decision has already been made that it is a car arriving in the United States, and it has been admitted to the United States by the inspector, and then, as the person leaves, they put in the necessary coins, and that is all there is to it.

Senator SIMPSON. And any thoughts about the cost?

Mr. NORTH. I am not thinking so much in terms of spending money, but that would be a good idea on this subject. I am thinking of trying to give a unit of Government the same kind of prestige that the Bureau of Labor Statistics has had over these years.

Senator SIMPSON. Well, again, you usually leave us with some very interesting concepts, and some of them we have pursued, indeed, and I appreciate that.

Back to Dr. Fuchs. Some observers of this scene of illegal immigration feel or seem to indicate that immigration reform is really no longer, if it ever was, a burning issue with the American public, and that, therefore, the enthusiasm to pass a comprehensive immigration reform legislation is not there. It no longer present the same degree and intensity. Is that observation accurate, in your opinion, and what might that mean for future immigration legislation and the future of the country without any further attempts to control illegal immigration?

Dr. FUCHS. Well—it has somewhat less salience now than it did in 1980, when we first knocked our heads together and worked so hard on this, because of the fact that we do not have a Marcel Pushort, and we do not have a very large number of refugees, the 200,000 of 1980, and so I would guess that with unemployment not as severe and with inflation down, that there is not as intense opposition by most folks who think of immigrants as coming into a fixed pie situation and taking some away from them. Generally, I would imagine also that due to the work largely of this committee, and of the other body, that there is much more awareness of a more thoughtful kind, more knowledge about the need to plan for intelligent immigration control. The country is clearly committed to a policy of lawful immigration at reasonable levels, and it is doing all right with it, and feels very good about it, but I think the country is, as poll after poll shows, is clearly committed and has been now for decades, even before the Select Commission to have a policy than can be reasonably enforced. There is something utterly demeaning about not having such a policy.

So I think that you are on solid ground in thinking that the country will respond to your approach, which is generally thoughtful and balanced. I think the main point, however, is not follow public opinion polls. The main point is to get the thing in order. Take employer sanctions, for example. You did not win on the issue of getting a universal and secure employee eligibility system, but the possibility in the bill. You have the principle of employer sanctions in the bill, and you won Senate support for it for the first time. So it seems to me you are at the next step to move ahead, and I hope, however, you go back to what I think should be some of the stronger features of the Simpson-Mazzoli bill. I think the main thing is for you, as a legislator, to do what you have been doing to keep your eye not on the immediate public opinion poll, but what is good for the United States 10 years down the road. That is what you are paid to do, and you have done it. Not everybody has done it on this issue, although I agree with Mike Teitelbaum that partly because of the groundwork that has been laid, and partly because of the leadership given to it in both Houses, there has been a generally high minded approach in both bodies, and I think, looking ahead, we want to say to our kids and our grandchildren 10 or 15 years from now, we have a policy that is enforceable. We have done whatever we could do to have a fair, humane, nondiscriminatory enforcement system, and to maintain ourselves as a country that has a tradition of asylum and of immigration, and we will continue to maintain those traditions, because we are a wealthy and powerful country that benefits from having people come to us that espouse freedom and opportunity. You have done those things. The country responds to that question.

On the details you are going to get public opinion polls that go against you, as on legalization, but you have got to take the gutsy action and say I have to vote for what I think is right.

Senator SIMPSON. I am certainly glad I do not have to spend my time on this issue dabbling in public opinion polls. I would have thrown it in long ago, because there is a total lack of definition in that game. They do not understand some of the phrases, but then they do understand what Simpson-Mazzoli means. That is like throwing an antipersonnel fragmentation device into a chamber. And if you ask them about employer sanctions and verifications and they say yes, and if you toss in a name like Simpson-Mazzoli, they say no. That is a ritual I have watched played out. I want to get a response from Dr. Teitelbaum.

You mentioned the European experience. Would you please share that briefly with us, the European experience with programs of employer sanctions.

Dr. TEITELBAUM. Mr. Chairman, to my knowledge, virtually every Western European country, with the exception of Great Britain, has legislation that makes it unlawful to knowingly hire a person unlawfully in the country. In some countries it is taken more seriously than others. The countries with the most emphasis on the issue are West Germany and France. The European experience, insofar as I have ever heard from anyone including those who do not like employer sanctions in those countries, is that they have a substantial effect in restraining the influx of the illegal immigrants. They may also have the effect in some cases of redirecting such migration into other directions; for example, toward other countries, or into other avenues such as claims for political asylum. But in terms of their direct effects, they are deemed to be very substantial. In my discussions with government officials from France and West Germany, in particular, none could imagine enforcing their immigration laws without the statutes that are currently on their books making unlawful the knowing employment of unlawful residents.

At the same time they have problems with some aspects of enforcement, and they are quite openly willing to say so. Their concerns are about communication among various Government agencies, about the adequacy of the enforcement effort, and about the small fines sometimes levied by the Judiciary against those who are convicted of violations of such laws, which those violators—as in the case of drug enforcement—see simply as a cost of doing business, figuring it into their prices and their wage structures. In all countries I know of, the reaction to such concerns has been to increase the fines and enforcement efforts for employer sanctions. These European officials were a bit bemused, I must say, by the reports of what the West German and French view of employer sanctions was as quoted or cited from the GAO report. Many of them said:

> Well, the GAO did not talk to me, and I do not know who they talked to. We do have concerns, but the notion that we would therefore not want to have what you call employer sanctions (what we call our labor law) is impossible.

The only other thing I would say is that if you actually read the GAO report, I think it is actually quite an interesting and well-done job. It goes into some detail in each of the countries it covers, and it reports these points of view that I have just described. Unfortunately, what often happens in advocacy politics is that part of a single sentence of that report is abstracted out; the quota is terminated in midsentence, so that the explaination of why there is a concern about the effectiveness of employer sanctions is not recorded by the advocate.

In most of the countries, the governments have been increasingly concerned with alien workers, especially illegal ones. Growing unemployment and increasing numbers of aliens have heightened the public's sensitivity to matters involving aliens and have induced governmental actions to control alien workers—although each country had laws penalizing employers of illegal aliens, such laws were not an effective deterrent to stemming illegal employment—for primarily two reasons. First, employers either were able to evade responsibility for illegal employment or, once apprehended, were penalized too little to deter such acts. Second, the laws generally were not being effectively enforced because of strict legal constraints on investigations, noncommunications between Government agencies, lack of enforcement resolve, and lack of personnel.

In France and Germany new laws went into effect on January 1, 1982, to increase the effectiveness of their employer sanctions. And in Switzerland, a public referendum later this year will decide whether to implement new immigration legislation.

I think it is only fair to ask anybody who cites the GAO report to quote the full statement from which they are citing, which explains that the concern is derived from the level of enforcement effort and judicial decisions.

Senator SIMPSON. Is discrimination ever mentioned in those foreign countries?

Dr. TEITELBAUM. Not that I have ever heard. There may be such concerns. I have never heard them.

Senator SIMPSON. It has not been expressed concerning employer sanctions in those European countries?

Dr. TEITELBAUM. Not to my knowledge.

Senator SIMPSON. Let me ask you, since you have given me some good provocative stuff to grapple with, and it is important that I do hear your view on the Legalization Commission and discrimination, and Dr. Chiswick has presented some very interesting views. Let me ask each of you other than Dr. Chiswick what you feel about that proposal of his, and it certainly is one that comes seldom publicly, and he has put it out on the table, that when apprehending illegal aliens that they be fined and detained, as a deterrence to illegal migration. It is not something that is new, some of those comments, as I say. It is politically harsh, unrealistic, perhaps, but let me ask each of you what you think of Dr. Chiswick's proposal on detention and whether that would be a deterrence to illegal migration.

Dr. Fuchs.

Dr. FUCHS. I am trying to think about different kinds of illegal aliens who are apprehended. My colleagues have been talking most about border apprehensions this morning, as if that is the entire problem, and we know that it is not, and we have got to think about—there are three areas to think about. The first is to say effectiveness, and that is what he is pushing, is the effectiveness, and I would have to think about that a lot more, but one thinks about the border as a situation which you do not want a lot of detention.

I have been down in the detention facilities. We do not want to build larger facilities and more of them. We have, I know, a situation in El Paso where sometimes people will come in just to get out of the winter. So I am not sure detention is the answer in terms of effectiveness.

Fining; a lot of those folks do not have anything to fine them. The last time I was in the El Paso Detention Center there were people from 28 foreign countries. Some of them could pay fines, but most of them could not. So I am not sure about that. Involuntary departure at the border is a very efficient, practical method for the INS, and I would want to hear people who are more expert about that.

Another category of concern would be the political one, not the deterrent effect. It may be true if you pick up a Dutch woman who is a legal secretary out of status, or a Filipino dental technician, it may be something that they will pay the fine, and so on, and go back, and it may be that the word will get around in those countries, and that might have some deterrent effect.

The problem there will be that that Dutch legal secretary will have a great many friends at the office, and I am not sure that the political cost of this would be worth putting her in a detention center. This has been proposed before and not studied in detail, and perhaps we were wrong not to go into any further detail, but we found on the political side there was much resistance to it. It does not have much of a political possibility. If my Congress people tell me it will not fly, there is no point in trying to go into it in much detail.

Senator SIMPSON. Dr. Teitelbaum, do you have any thought on that?

Dr. TEITELBAUM. Well, I think Barry Chiswick puts his finger on an important problem with enforcement, that indeed it is a revolving door at the border and elsewhere. The expenses of revolving the door are higher if there is interior apprehension and deportation from a long distance; the cost of air travel alone becomes considerably higher than going back to Juarez and simply walking back the next day or the next evening.

As to detention, I have some concerns about it. One of them is a point that Dr. Fuchs raised, which I will not repeat. There is also a question of cost, which could be considerable depending on the numbers that we are talking about, and the numbers are not going to be trivial.

A third problem is that of identifying the repeaters. Barry Chiswick has suggested that there should be an escalating scale, based on repeat apprehensions. My experience, limited as it is, is that it is awfully hard to identify people who are engaging in clandestine activities. They do not carry with them good forms of identification. One could use fingerprints, I suppose, but then one gets into a much more elaborate identification problem. One could ask them if they have ever been arrested before, but then one could not attach much validity to the response.

Another problem I would foresee: I can already hear the description of detention facilities as concentration camps. I can hear it in the audience or in the atmosphere. It is bound to be used by opponents of such a policy. It is a good emotive term, and would cause a goodly number of Members of the Congress to look again at this type of proposal. Nonetheless, I would say he is putting his finger on an important problem about relying upon direct enforcement. If there is no penalty for apprehension, except the cost of coming across again, and if the cost for coming across is zero because the smuggler has guaranteed successful entry as part of his fee, which is often the case, then I think there is a problem of a revolving door. Thus I believe this proposal or other proposals to provide some deterrence for that kind of repeat activity would warrant attention by the subcommittee.

Senator SIMPSON. David, do you have any comments on it?

Mr. NORTH. Yes, I do.

I would like to add a footnote about what Michael said about employer sanctions in Europe. As you might know, we, the German Marshall Fund, are paying some attention to this, and within a few months we will have two or maybe three people who have been to Europe and Canada paying attention to employer sanctions, and we will know more about it than we do now.

Furthermore, a member of your staff may go to Europe looking at the same issue.

On the question of deterrence, I am glad that Barry Chiswick raised this issue. I think there is a lot to be said for it. I think that we should be thinking in terms of systems. We should be thinking in terms of the current system as being sort of automatic and not particularly designed to inconvenience anybody, and I think that is wrong. I think there should be an uncertainty in what happens to those who violate our immigration law. I do not think we could conceivably work out a system whereby everybody who has been caught the second time goes to jail, or whatever, for 3 or 4 months, but I think there should be a sort of reverse lottery going on here, in which everybody who is arrested a second time faces up to sometime in detention, and some unknown portion of them wind up doing so, and that is publicized on Mexican television, and various other media, and other countries that send us illegal aliens, so there should be a thought process, not only that deterrence is probably useful as it is in any law enforcement situation, but it should be structured in such a way to make it dramatic, uncertain, and see to it that for every one person who is detained for a while that thousands or tens of thousands know about it.

I also think we should start thinking about a differential treatment of different kinds of people. If we catch somebody at the Chula Vista who is crossing illegally, and that person is an old person by Mexican standards, we probably should turn them back at the crossing point.

If, on the other hand, they are young and healthy, we might take them some 30 miles to the east and inconvenience them by taking them across at Tecate. Further, on occasion, when we find people who have come from the United States from the middle of Mexico we should try—we should start a form of interior repatriation so a person is taken by bus near where that person lives. Perhaps that could be a choice: 30 days in an American jail, or you could go home at our expense. I hate turning people automatically across the border night after night. It is not a very good idea, and I think some variations on that theme should be created.

Furthermore, I think we should try to use some of the other laws that are there on some of the subjects. If we occasionally stop some southbound undocumented individual who had worked, who did have some earnings, who had not paid any income taxes. if we collected income taxes from them when they leave, this would make the price of violating the cost of violating the immigration laws higher.

Dr. FUCHS. Assuming that deterrence works in this way; fines, and mixed methods of sending aliens back, and perhaps detention; assuming it would be cost effective, and the foreign policy problems that raised would not be very great; assuming all that, I think it is clear that we must have employer sanctions in order to have some equity and balance in the way we approach the business of enforcing our immigration law, and this proposal comes from Barry, from Dr. Chiswick, who has been an opponent of employer sanctions. Here you have a situation where we would be escalating the penalty on the alien, and still have an exemption for the employer who hires the alien, and that is wrong.

Senator SIMPSON. Well, all of that exercise is again to point out that there are some very fascinating ways to present to the subcommittee what we should do about illegal immigration. And it was my thought, and the thought of the Select Commission, we ought to try the most humane one first, which is to reduce the magnet of jobs. It may be a noble, naive approach, but it seems to me the most sensible humanitarian approach at this time. Because, as I see it, if we do not get that done, then we will go into other methods which are not even expressed as being evil or racist, or anything. They are expressed out of frustration and historical patterns of other countries, and it is just my thought that we ought to try the most humane one first, because certainly there are others that range from this to thoughtful proposals, and some indeed that are extraordinary proposals.

We shall, anyway, be forming the legislation based upon these hearings, and further refinements of it. I have some other questions that I want to ask you and I will do that in writing with regard to guest worker programs. Certainly no one here is interested in the return of the bracero program, and we do have a very special situation, where either we do something with the existing program to provide the proper agricultural assistance in certain geographical areas of the country, or else we continue to see them use a pool of illegal labor that they will find somewhere, and I assure you they will. They have expressed that to me with great clarity, out of business necessity, or maybe we are so dependent on the illegals in certain areas that if we do not use them, we will go broke. I think we might find that out, too. But in the long-term interest of the United States, I find few people looking as far as 10 years down the line. They are not even looking 5 years down the line, but 6 months down the line, and that is one of the serious problems of the issue. I will submit those, and particularly some more to you, Dr. Chiswick. I like your thoughts on legalization, and your views on those who have roots here, I thank you very much for being here. Again, you have been most helpful and most thoughtful, and in provocative ways. I do not know how you refresh yourself as well as you do, and I thank you all very much, and we will now recess until 2:30 p.m. and pick up again at that time. Thank you.

[Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 2:30 p.m., the same day.]

AFTERNOON SESSION

Senator SIMPSON. The hearing will come to order again and we will go into the second portion of our hearing today with a panel consisting of various members of various groups in America:

Raul Yzaguirre, president of the National Council of La Raza; Joe Trevino, executive director of the League of United Latin American Citizens or LULAC; Arnoldo Torres, vice president of the National Hispanic Leadership Conference; Richard Fajardo, Acting Associate Counsel of the Mexican American Legal Defense and Educational Fund or MALDEF.

I appreciate your being here. We always appreciate the testimony you present to us and your serious way of addressing what you indeed see to be the concerns that confront the people you represent, and you have always had access to this subcommittee and it is always so because I think it is very critical that you be heard on immigration reform, indeed so.

With that, I welcome you to the subcommittee proceedings and we will proceed in accordance with the agenda.

Mr. Yzaguirre.

PANEL CONSISTING OF RAUL YZAGUIRRE, PRESIDENT, NATIONAL COUNCIL OF LA RAZA; JOE TREVINO, EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS [LULAC]; ARNOLDO TORRES, VICE PRESIDENT, NATIONAL HISPANIC LEADERSHIP CONFERENCE; AND RICHARD FAJARDO, ACTING ASSOCIATE COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND [MALDEF]

Mr. YZAGUIRRE. Thank you, Mr. Chairman. I understand our time is limited so, with your indulgence, I would like to ask the committee to make our testimony and the attachments part of the record, and instead I will briefly summarize my comments.

Senator SIMPSON. Thank you. I appreciate that and it is so ordered.

Mr. YZAGUIRRE. Mr. Chairman, in my testimony and here I want to reiterate what we said before on many other occasions that we appreciate your leadership on the committee on this issue. We appreciate the help that we have gotten from your chief counsel, Mr. Dick Day.

We have had differences in the past over means, but, our organization, has been very clear on the goals and we share those goals with you and we applaud you for your interest and also for disassociating yourself from a variety of rather racist and biggoted statements that have been made on this issue in the past. Your integrity is well established and we feel that that quality has helped narrow the differences between our position and the position that you hold.

Mr. Chairman, we feel that S. 1200 is a step backward in the process of evolving an immigration reform bill, and in our testimony we very specifically detail exactly why we feel that to be the case.

First of all, one of our major concerns is the question of employer sanctions. In our mind, employer sanctions must fulfill three basic tests. It has to be necessary, it has to be effective, and it must not create more problems than it solves. In other words, the benefits ought to outweigh any detriment that it might cause.

In our view, S. 1200 fails all three tests. We have not established that the research record supports the theory of displacement of native workers. We have very clear evidence of the ineffectiveness of employer sanctions both in 12 States around the country who have implemented State employer sanctions law and in a variety of industrialized nations who have employer sanction laws, and in our own Federal law, the Farm Labor Contractor Registration Act, which also has a sanction law that applies to farm workers.

We believe very seriously that employer sanctions will cause and indeed increase the very serious problems we have with discrimination against particularly Hispanics, but indeed anybody else who might look foreign.

Our concern over discrimination is not theoretical, Mr. Chairman. It is real. And if I may read some very specific examples, according to Time Magazine, after INS's Project Jobs, the publication reported that employers involved in the 300 raids were reluctant to rehire even those workers who have proved their legal status to the INS.

According to the L.A. Times, a fellow by the name of Ed Ryan, who is vice president of Starkist, last year reported laying off workers suspected to be undocumented to avoid disruption. Another manufacturer, Aluminum Precision Products, laid off over 30 "suspect" immigrant workers as a precautionary measure. And we have countless other examples of very specific acts of discrimination, even when the threat of a bill was prevalent, even before the actual enactment of the bill, and in furtherance or as a result of State employer sanction laws.

Our next problem is with legalization. In our testimony we detail exactly why we feel legalization is in the best interest of this country. We show that it is not simply good policy for the undocumented worker, but that it is good policy for this country.

We are very concerned, very troubled by the trigger mechanism contained in S. 1200 for legalization. We see a basic inconsistency. As we understand the legislation, if sanctions do not work, that is, if the proposed Commission cannot establish that sanctions have indeed worked, there will not be legalization. On the other hand, if they do work, if they are effective and if they therefore cause the deportation of resident undocumented aliens, there will be nobody to legalize, therefore we simply do not understand what is proposed to be gained by the triggered legalization provision.

We have similar problems with the massive expansion of guest workers. Again, if the purpose of the bill and immigration reform is to protect domestic jobs, we fail to see why we need a massive increase in the importation of workers.

Lastly, in our testimony we talk about a painful subject and that is the charge that perhaps the Hispanic leadership is not representative of the Hispanic community. We detail the fallacy of this charge, and more importantly, we detail the fact that this country has always been very ambivalent about immigrants. On the one hand, it tends to honor its immigrants of the past, but when it comes to very specific immigration now at the present moment, this notion has a more ambivalent vein.

We also establish the fact that when you poll in greater depth, and when you poll people that are more involved, more knowledgeable about the issues of immigration, you get an entirely different picture.

Mr. Chairman, that concludes my testimony and I look forward to your questions.

[The prepared statement of Mr. Yzaguirre follows:]

PREPARED STATEMENT OF RAUL YZAGUIRRE

I. INTRODUCTION

Mr. Chairman and members of the Subcommittee, my name is Raul Yzaguirre, and I am President of the National Council of La Raza. The Council is a Washington, D.C.-based national organization dedicated to improving life opportunities for Hispanics in the United States. The Council's constituency is composed of some 75 affiliated Hispanic community-based organizations located in 19 states and the District of Columbia, who together serve approximately one million Hispanics.

Mr. Chairman, I wish to express my appreciation to you for giving us the opportunity to present our views on an issue of critical importance to the Hispanic community and to the future of this great nation. Although we are not always able to agree, we have come to know each other well through our continuing dialogue; we have the highest respect for your leadership on this terribly difficult and complex issue. The fact that our disagreements with you have forced us, ultimately, to oppose portions of your previous legislative initiatives with all of our energy and influence does not diminish our admiration for your intelligence, integrity, and sense of fair play.

We also wish to recognize the outstanding work of Subcommittee General Counsel Dick Day and his staff. Despite our oppposition to certain elements of the legislation you have sponsored in the past, your staff has consistently acted with the utmost courtesy, professionalism, and fairness in its dealings with the National Council of La Raza.

We especially appreciate the fact that you have dis-associated yourself from xenophobic extremists who seek to exploit the immigration issue to promote fear, bigotry, and racism. As you have pointed out before, rational discussion of this issue is difficult enough without having the debate poisoned by racial overtones.

Therefore, we were pleased when the Senate, in its wisdom, saw fit to elect you to the position of Assistant Majority Leader. We are confident that you will carry out your leadership responsibilities with the intelligence and wit that have become your trademark.

I come before this Subcommittee today to explain why we believe that S. 1200 is a clear step backward even from the previous efforts which we were obligated to oppose. The National Council of La Raza opposes S. 1200, and believes that it will be less effective and more discriminatory than previous versions of the bill. Our reasons for this belief are described below.

II. ANALYSIS

A. Employer Sanctions

Our concerns with employer sanctions are well known to the Chairman and this Subcommittee. As with any proposed policy system, sanctions must be measured against three tests. First, the proposed policy must be necessary, for any change in existing policy must be justified on the basis of need. Second, the proposed policy must be effective; it should solve the problem which justifies its adoption. Finally, a new policy must not create additional problems that may outweigh the benefits it provides. We believe that employer sanctions fail all three tests.

That there is an immigration "problem" is indisputable; the question is whether the scope of the problem justifies the proposed policy. The most common rationale for employer sanctions is that undocumented workers displace large numbers of citizens and other authorized workers from jobs. The issue of job displacement is a controversial one among economists, and there is little consensus among scholars regarding the scope and degree of such displacement. We have recently completed an analysis of the latest research on this issue, a copy of which is listed as Attachment A to this testimony. We discovered that there is considerable merit to both sides of the displacement debate. Some natives are inevitably displaced, and lower-tier, disadvantaged workers -- including Hispanics and other minorities -- appear to bear the brunt of this displacement. However, the empirical data show that, on balance, undocumented workers have a neutral, and in some cases positive, effect on the economy.

I will address the question of effectiveness more fully below. It is sufficient to note here that employer sanctions have been tried in other countries, in 12 states, and even at the federal level through the Farm Labor Contractor Registration Act, yet there is simply no empirical evidence that such sanctions have been effective in reducing undocumented populations anywhere in the world. The fact that agricultural employers acknowledge that they currently rely on massive numbers of undocumented workers -- despite the employer sanctions provisions of the Farm Labor Contractor Registration Act -- is clear evidence that employer sanctions do not substantially reduce the employment of unauthorized workers.

Our greatest objection to employer sanctions, as you know, is that they will increase employment discrimination against Hispanics and others who fit immigrant stereotypes. There is considerable theoretical disagreement over this issue, but somehow a key fact has been omitted from the debate on discrimination.

The fact is that discrimination resulting from sanctions has already occurred. After California passed its sanctions law, one of the top administrators of the program testified before the U.S. Commission on Civil Rights that some employers responded by screening employees on the basis of ethnicity and speech accent. During the House debate on the Simpson-Mazzoli bill last year, the Los Angeles Times reported that a number of employers had already begun to screen out Hispanic employees; thus, even the threat of sanctions has led to employment discrimination. We do not believe that all employers will react in this manner, but we are convinced, based on irrefutable, "real world" evidence, that some discrimination will result. A brief summary of our position on the discrimination issue is listed as Attachment B to this testimony.

Proponents of employer sanctions have responded to our concerns about discrimination by pointing to the uniform verification process as insurance that employers will not be given any incentive to discriminate. While we do not agree that uniform verification is sufficient protection against discrimination, we have accepted the inclusion of the verification process -- including penalties for failure to apply the process to all new hires -- in past legislation as tangible evidence of your commitment to minimize discrimination. We are therefore concerned that S. 1200 contains a voluntary verification process, with no penalty for discriminatory application of that process. Some members of the business community argue that the verification process will impose severe recordkeeping burdens on business, but the history of our civil rights laws shows that such records are essential to identify patterns of discrimination. We are disappointed that the recordkeeping argument has led to the removal of the uniform verification provisions from this bill, for we believe that recordkeeping is a small price to pay to further this nation's commitment to equal employment opportunity.

In addition, we are disappointed that this bill does not include an effective system of redress for victims of discrimination resulting from sanctions. The proposed requirement that the existence of such discrimination must first be certified by the General Accounting Office (GAO) and the U.S. Commission on Civil Rights (USCCR) before the redress system is implemented is faulty on three grounds. First, discrimination is terribly difficult to detect. Most victims of discrimination do not even know that they have been discriminated against. Second, in the absence of recordkeeping, it is not clear how the GAO and the Commission on Civil Rights are to document the existence of discrimination. Third, the initial victims of discrimination would have no means of seeking remedies, since the redress system would not be triggered until after a finding that such discrimination had occurred.

In addition, we believe that the redress system proposed in S. 1200 is sorely inadequate, even if it were implemented. Seasonal and temporary workers would not be afforded protections, and legal permanent residents could not seek relief for acts of discrimination on the basis of alienage.

To the extent that any political consensus exists in support of employer sanctions, that consensus includes a uniform verification system, and strong, effective anti-discrimination provisions. S. 1200, unfortunately, omits these two key elements. Mr. Chairman, we recognize that any politically viable bill must include a credible enforcement provision. To that end, we supported the Roybal bill (H.R. 4909) in the House last year, which proposed the targeted enforcement of existing labor laws as a deterrent to the hiring and exploitation of the undocumented. Many argue that labor law enforcement is not perfect, that it will not eliminate the hiring of all undocumented workers. But neither will employer sanctions. We believe that labor law enforcement will be more cost-effective than employer sanctions in reducing the hiring and exploitation of undocumented workers, without the risk of increased employment discrimination. Attachment C to this testimony examines the issue of labor law enforcement in more depth, and we would urge the Subcommittee to consider such enforcement as a positive alternative to employer sanctions.

B. Legalization

The legalization program in S. 1200, we believe, is ill-conceived and inadequate. It is ill-conceived because it is structured in such a way that virtually ensures that legalization will never be implemented; it is inadequate because, even if implemented, it would not substantially reduce the underclass of undocumented workers.

Mr. Chairman, I would first like to review the rationale for legalization. First and foremost, legalization is a practical solution to a major problem. A legalization program would:

- Reduce the highly exploitable subclass of undocumented persons, the existence of which is harmful to both the undocumented and the society at-large;
- Enable the Immigration and Naturalization Service to better target enforcement resources;
- Permit employers dependent upon this pool of labor to continue to use it on a lawful basis; and
- Provide comprehensive information about the undocumented population which is essential for improved enforcement in dealing with future flows, as well as for demographic and population planning.

There are humanitarian and ethical considerations involved as well. Massive deportation or repatriation campaigns are not only impractical, but likely to result in wholesale violations of civil rights. The vast majority of the permanent undocumented population have established equities in this country; they work hard, they pay taxes, and are otherwise law-abiding, contributing members of the society. The main point is that legalization is the right thing to do, not just for the undocumented, but for the society as a whole.

We know you share our commitment to the concept of legalization, but we believe that the program contained in S. 1200 may never be implemented. S. 1200 would require certification by a Presidential Commission of three conditions as pre-requisites for the implementation of legalization. The Commission would have to certify that enforcement programs are "substantially":

- Controlling illegal entry;
- Preventing and deterring visa abuse; and
- Eliminating the employment of unauthorized aliens.

If, as we believe, employer sanctions will not be effective in deterring the employment of undocumented persons or in reducing illegal entry or visa abuse, then legalization could not be implemented. Attachment D to this testimony describes the reasons for our belief that sanctions won't work. In short, our analysis suggests that the majority of the employers of undocumented persons will either accept sanctions as a business cost, or will easily be able to evade or circumvent sanctions. This analysis is confirmed by the experience of sanctions in other countries, the experience of the Farm Labor Contractor Registration Act, and by on-going research on the labor market impact of undocumented workers.

Moreover, even if sanctions were effective, it is unclear how the Commission would be able to certify their effectiveness given the extreme unreliability of existing INS and other data on illegal entry, visa abuse, or employment of unauthorized aliens. Furthermore, in the unlikely event that the Commission was able to reach a consensus on a set of reliable data to assess the effectiveness of enforcement efforts, serious questions remain about the ability of the Commission to satisfy the pre-conditions for legalization.

For example, the operative term in the three pre-conditions for legalization is "substantially," i.e., illegal entries, visa abuse, and unauthorized employment must be "substantially" reduced. It is not clear whether "substantially" would mean reductions in absolute numbers of entries, visa abusers, or unauthorized employment, or merely relative reductions in these categories. If an absolute reduction were required, the unauthorized employment criterion would probably never be met given the transition program for agricultural employers, and the fact that only new hires would be covered by employer sanctions.

Even measurements of relative reductions in illegal entries, visa abuse, and unauthorized employment would be problemmatical for the Commission, because factors other than the effectiveness of domestic immigration enforcement can affect rates of illegal migration and employment. Changes in the world economy or in the domestic economies or political conditions of the major sending countries can affect migration rates. It is known that economic conditions in the United States affect rates of migration to this country, and certainly affect employment. If we were to have a recession here, one would expect that the employment of undocumented persons would be reduced. It is not clear how the Commission could determine the extent to which any reduction in the employment of unauthorized persons would be attributable to effective enforcement, domestic economic conditions, or other factors.

In addition, enforcement strategies and deployment of INS personnel change periodically. Even if a "baseline" measurement could be agreed upon, data for subsequent years could be skewed by policies and events as innocuous as the discovery of "bugs" in automated visa control systems, or as momentous as another "immigration emergency" such as the Mariel boatlift. In 1980, for example, a shift in deployment of INS personnel to South Florida from the U.S.-Mexico border was accompanied by a decrease in apprehensions. It is probably safe to say that the two events were related, but it is not possible to quantify the effect of the deployment.

In sum, the inherent unreliability and imprecision of the data base available to the Commission would make the certification process terribly difficult at best, and arbitrary at worst.

There are other problems with the "triggered" legalization concept. The undocumented population eligible for legalization would be in serious jeopardy during the period before the implementation of legalization. This jeopardy issue establishes a "catch-22" situation; if employer sanctions are effective, then presumably there will be few persons to be legalized; if sanctions are not effective, legalization will not be implemented.

For these reasons, the National Council of La Raza opposes the concept of a "triggered" legalization program. In addition, our concerns about the "trigger" notwithstanding, we believe that the legalization program in S. 1200 is inadequate because it would not substantially reduce the undocumented population. The 1980 "cut-off" date and the unnecessarily strict eligibility requirements together would reduce the eligible population, and the absence of other safeguards would deter a substantial proportion of the eligible population from coming forward to participate in the program.

It has been argued that the legalization concept is not politically viable, and that therefore changes such as a "triggered" program are necessary to ensure passage of an immigration reform bill. The facts simply do not support this conclusion. Two years ago in the Senate, the vote to retain legalization (76-21 against the Helms amendment to strike legalization) was virtually the same as the vote in favor of final passage of the bill (76-18). In the House last year, the vote to retain legalization (233-195 against the McCollum amendment to strike legalization) was much greater than the vote margin in favor of final passage of the bill (216-211).

Some have argued that the "triggered" legalization program was endorsed by the Select Commission on Immigration and Refugee Policy. We have reviewed the report of the Select Commission, and have found no references to a "trigger" of any kind. The Select Commission endorsed a provision to ensure that legalization did not begin until enforcement measures were in place, but did not make the implementation of legalization contingent on any certification of the degree of effectiveness of such enforcement measures.

Therefore, Mr. Chairman, we recommend that the "trigger" requirement be removed from the legislation. We further recommend that the legalization program itself be re-structured along the lines of last year's Roybal bill (H.R. 4909), to ensure that this one-time opportunity to reduce the undocumented subclass be as effective as possible.

C. Guestworkers

As you know, the National Council of La Raza opposes any massive expansion in "guestworker" programs, on several grounds. First, such an expansion is inimical to the purpose of the legislation. If one major purpose of the bill is to protect domestic jobs, it is difficult for us to understand how this is to be accomplished by importing 500,000 foreign workers. Second, previous experience with guestworker programs, both here and abroad, show that such programs tend to encourage, rather than discourage, illegal immigration. Third, such programs encourage the exploitation and abuse of both the guestworkers and native workers, as demonstrated by the infamous "bracero" program. The "bracero" program experience shows that abuse and exploitation are likely even when legal protections for the guestworkers and native workers are provided. We have no basis to believe that the proposed changes in the H-2 temporary worker program embodied in S. 1200 will be more successful than previous guestworker programs in protecting the rights of both guestworkers and native workers.

The Select Commission rejected expansion of guestworker programs by a 14-2 vote. We are disappointed that the guestworker provisions in S. 1200 protect the naked, economic self-interest of a chosen few, while undermining the purposes of this bill. Mr. Chairman, we recommend that the proposed changes in the H-2 program be deleted from the bill entirely. To the extent that the agricultural transition program proves insufficient to meet the legitimate needs of agricultural employers, we would recommend that the scope and degree of any changes in the H-2 program be thoroughly studied prior to the implementation of such changes.

III. OTHER ISSUES

We believe that there are some improvements in S. 1200 over previous reform efforts. We applaud the removal of provisions that would have reduced legal immigration, and that would have unnecessarily restricted the rights of persons seeking asylum in this country. But on balance, we believe that S. 1200 is a major step backward from legislation previously reported out by this Subcommittee.

There is one last issue I must address. It has become fashionable recently to cite public opinion polls of Hispanics to suggest that the Hispanic leadership is out of step with its community on the issue of immigration reform. It is argued that some polls have demonstrated support in the Hispanic community for employer sanctions. Since every member of the Congressional Hispanic Caucus and virtually all the leaders of national Hispanic organizations oppose employer sanctions, the argument goes, these leaders are unrepresentative of their constituents.

Mr. Chairman, as a well-informed scholar of the history of immigration, you are surely aware of this country's traditional ambivalence towards newcomers. On the one hand, we cherish our immigrant heritage; on the other hand, we tend to fear newcomers. I believe that the polling data most commonly cited reflect only the latter sentiment. A recent poll by the U.S. Committee for Refugees found that, when asked in the abstract whether the number of foreigners allowed into the country should be curtailed, most of the public responded in the affirmative. But when asked specifically about admitting ten different types of immigrants and refugees into the U.S., the majority of the public chose to admit each one. The poll further found that the more accurate a person's knowledge about immigration and refugee issues, the more willing the person is to support generous immigration and refugee policies. These findings confirm the traditional American ambivalence toward immigration, and demonstrate that it should not be assumed that superficial polling data accurately reflect public attitudes.

With an issue so ripe for demagoguery and nativism, it is incumbent on our political leaders to appeal to the highest sentiments of the public, for our history shows that the public interest is poorly served when policy makers respond blindly to xenophobic sentiments. The Chinese Exclusion Acts, two "repatriation" campaigns against Hispanics, and the internment of Japanese Americans at the outset of World War II -- incidents that are among the most shameful in our history -- were the results of fear and intolerance. Immigration policy should be established based on the best available information by those fully aware of its implications for our country, not by superficial polling data.

A 1980 Gallup poll reported that two-thirds of the public opposed any immigration unless unemployment fell below four percent. Yet, not even extremist groups advocate the elimination of all immigration, despite widespread agreement that unemployment is unlikely to approach the four percent level in the near future. We do not believe that public officials who support modest levels of legal immigration are out of step with their constituents. A recent Roper poll found that more than 80% of the public supported major reductions in legal immigration. Yet, proposals to restrict legal immigration at about current levels were soundly defeated in the House last year. We do not believe that the 231 House members who voted against this proposal are themselves "out-of-touch" with their constituents.

Mr. Chairman, Hispanic Americans share the larger public's ambivalence toward immigration. If we expect our legislators to appeal to the best, rather than the worst instincts of the public in formulating public policy on this issue, surely we should expect no less from the leadership of the Hispanic community.

IV. CONCLUSION

In conclusion Mr. Chairman, I remain convinced that, despite our substantial differences, it is imperative that we continue to try and build a consensus for positive immigration reform. No community suffers more than ours under the status quo; no community stands to benefit more from a legalization program. Our beliefs obligate us to oppose S. 1200, but I pledge to work with you in good faith to narrow our differences and to address the concerns raised in this testimony, so that one day we can work together to pass the fair and effective immigration reform legislation that is so sorely needed.

ATTACHMENT A

NATIONAL COUNCIL OF
LA RAZA
OFFICE OF RESEARCH
ADVOCACY AND LEGISLATION

Perspectivas
Públicas

ISSUE BRIEF

Title UNDOCUMENTED IMMIGRANTS IN THE LABOR MARKET: RECENT RESEARCH FINDINGS (Feb. 1985)

Contact Charles Kamasaki or Dan Purtell at (202) 628-9600

I. BACKGROUND

Early researchers utilized theoretical models and general, published labor market data to estimate the labor market effects of the undocumented. Most of these researchers fit one of two categories. The first category includes those who believe that widespread displacement of native workers results from the employment of undocumented aliens. Vernon Briggs, an economist from the University of Texas, for example, suggested that increasing the supply of any commodity -- in this case labor -- would cut the price of that commodity (wages). Eventually, wage depression and increasingly poor working conditions were said to "drive out" native workers, resulting in "indirect displacement" of such workers. In addition, Briggs argued, some undocumented aliens directly displace natives from "good" jobs. Former Secretary of Labor F. Ray Marshall, immigration expert David North, and Department of Labor economist Marion Houstoun came to similar conclusions.

Another set of economists, including Michael Piore and Wayne Cornelius from the Massachusetts Institute of Technology, came to far different conclusions. This category of researchers posited the existence of a dual or segmented labor market, with the vast majority of "good" jobs being supplemented by "bad," primarily menial, low-wage jobs. They argued that few native workers would take the "bad" jobs, and that undocumented aliens therefore filled a void in the labor market.

Cornelius has since characterized both types of research as "essentially conjectural analyses based on little or no real data."[1]

A second generation of research emerged in the late 1970s. North and Houstoun, Cornelius, and others began to collect field data to integrate into their theoretical models. However, the data used by these researchers were drawn from inadequate, limited samples and were typically interpreted in ways which merely supported the authors' original theoretical positions. In addition, these studies were attempting to address very complex issues while asking very simple questions. For example, they attempted to establish whether -- and to what degree -- displacement of native workers occurred without attempting to explain why labor markets operated in certain ways.

Theoretical arguments grew more sophisticated. Julian Simon of the University of Illinois, Niles Hansen of the University of Texas, and others argued that immigrants -- both legal and illegal -- create jobs by consuming goods and services, and by starting new businesses. Marshall and others refined the displacement thesis by arguing that minority and disadvantaged native workers are most vulnerable to unfair competition from the undocumented, irrespective of the macro-economic impact of the undocumented. Marshall also argued that the segmentation thesis assumes that many Americans are too lazy to take low-wage jobs, a charge he rebutted vigorously. Finally, Marshall and Briggs increased their use of normative arguments. For example, they argued that, to the extent that the presence of "illegal aliens" contributes to the retention of some highly competitive industries, the undocumented perpetuate "low-wage, low-productivity job systems that lower the average level of productivity in this country."[2]

In 1979, the Department of Labor, relying on the kind of supply-demand analysis used by Briggs, Marshall, et. al., estimated that one in five jobs held by undocumented aliens could be filled by a native worker. In other words, according to this study, the displacement rate of native workers by the undocumented is on the order of 20%.[3]

In 1981, the U.S. Chamber of Commerce released a study comparing unemployment rates of cities with large numbers of undocumented aliens to those of cities with small or no undocumented populations. The Chamber found that cities with large undocumented populations tended to have lower rates of unemployment than cities with small or nonexistent undocumented populations. The Chamber concluded that "there is no correlation between the unemployment rate and undocumented workers."[4] The Chamber study was rebutted by David North, who noted key methodological shortcomings in the Chamber's approach. Most observers -- including this writer -- accept North's critique. However, even when the data are more rigorously analyzed, the Chamber's main conclusion -- that there does not appear to be a strong, positive correlation between the presence of undocumented workers and high rates of unemployment -- seems to be accurate.

II. RECENT RESEARCH FINDINGS

Only recently have social scientists and others begun to examine the "real world" labor market effects of the undocumented worker phenomenon. Project Jobs, a 1982 Immigration and Naturalization Service (INS) enforcement initiative, provided an opportunity to test the validity of conflicting claims about displacement. INS reported 5,440 apprehensions of undocumented workers with an average wage of $4.81 per hour. According to a survey by the Los Angeles Times, about 80% of the jobs "freed" were filled again by undocumented workers. The survey found that, while many native workers applied for the open positions, very few chose to stay in those positions for more than a few days.[5]

The wage depression issue was studied by University of Texas economists Barton Smith and Robert Newman, who compared wages paid along the U.S.-Mexico border with wages in non-border areas. They found that the differential between the two areas was about eight percent. They concluded that the negative effect of the undocumented worker on wages was "not as severe as many have contended."[6] One possible problem with the Smith-Newman study is that some of the non-border areas studied included cities with large undocumented populations themselves, e.g., Houston.

Beginning in the early 1980s, Rice University economist Donald Huddle started to examine the construction industry in Houston in order to measure the impact of undocumented aliens on the blue-collar labor force. Huddle concluded that for every 10 undocumented workers, about seven native workers were displaced.[7] Huddle projected his findings over the entire U.S. construction industry -- and even into other industries -- and suggested that the net costs of displacement, welfare use, tax evasion, and increased welfare benefits for displaced workers amounted to billions of dollars annually. UCLA economist Estevan Flores and University of Texas sociologist Gilberto Cardenas vigorously attacked Huddle's findings and conclusions, noting, for example, that Huddle used the color of construction workers' helmets to differentiate between undocumented and native workers. Flores also noted that Huddle's findings had not been subjected to anonymous peer review from a social science journal, and that the study had not been published in a professional journal.[8] Nevertheless, Huddle's research has been widely publicized within Texas and in the national press, and has been cited during floor debate on the Simpson-Mazzoli bill in both the Senate and the House.

In 1984, Thomas Muller of the Urban Institute published a summary of a study entitled The Fourth Wave. Muller rigorously analyzed special tabulations of Census and Current Population Survey data for Los Angeles and Southern California, and found that:

- There was no evidence that work opportunities for nonimmigrants lessened as a result of high rates of immigration. Unemployment rates rose less rapidly in Southern California than in the remainder of the nation from 1970 to 1980.

- Those industries with the highest percentages of Mexican labor had the slowest rates of wage increases. Immigrant domination of the occupations with increases below the national average suggests that immigrants themselves absorbed most of the effects of depressed wages.

- Lower wages in these industries enhanced their competitiveness, during an influx of lower-cost foreign goods. As a result, manufacturing sectors which experienced decreased employment nationwide actually expanded in Los Angeles, adding positions for skilled and white-collar workers to complement the immigrant-dominated, unskilled production jobs.

- Despite wage depression in some sectors, wages of all employees, already above the national average, rose nine percent more rapidly in Los Angeles than in the nation in the 1970-80 period.

- Despite the arrival of 325,000 Hispanics, whose average income was only half the average income for the area, per capita income from all private sources rose more rapidly in Los Angeles than in the nation as a whole. During the same time, per capita growth in transfer payments, (e.g., public assistance) was considerably lower than in most other metropolitan areas.9

Julian Simon and Stephen Moore of the University of Maryland are nearing completion of a study on the effects of immigration on unemployment. Simon and Moore are examining changes in unemployment levels in cities as a function of varying rates of immigration to those cities. Using changes in unemployment levels avoids many of the methodological pitfalls that North identified in the Chamber study. Simon and Moore have found that:

> ...there is no observed increase in unemployment due to immigration, even (or especially) in the relatively short run during which adjustment frictions should cause the most severe unemployment problem.10

This study focuses on legal immigration, not undocumented immigration. Previous studies of this issue, however, have demonstrated that undocumented workers tend to be concentrated in localities with substantial numbers of legal immigrants of similar ethnicity. Nevertheless, the findings are not automatically applicable to the effects of the undocumented in the labor market.

University of Colorado economist Michael Greenwood utilized time-series data from the Social Security Administration to estimate the employment effects of immigration for selected cities. He found that:

> ...for New York, Los Angeles, Chicago, Miami, and San Fransisco, one more employed migrant results in one more job.... However, for Houston, El Paso, Philadelphia, and San Diego, one additional employed migrant resulted in more than one additional job.11

Greenwood further examined the Social Security data to determine the effects of immigration on wage levels. He found that, in the 11 cities studied:

> ...in each city, except El Paso and Philadelphia, migration had a statistically significant effect on local earnings levels. In Chicago the effect was negative, but in the remaining cities it was positive.12

Other researchers are beginning to address the more complicated question of how immigrant-dominated labor markets function. University of Texas professors Gilberto Cardenas, Rodolfo de la Garza, and Niles Hansen have discovered that many Mexican immigrants in Austin, Texas, tend to be employed by firms owned by other Mexican immigrants, or by second-generation Mexican Americans. According to these researchers, the presence of Mexican immigrants "has contributed significantly to the development, maintenance, and recent expansion of the Chicano business sector" in Austin by providing reliable, low-cost labor and by expanding the market for goods and services from the Chicano businesses.13

Sociologist Gary Lemons of the University of New Mexico has found the roofing industry in Albuquerque, New Mexico, to be increasingly immigrant-dominated. The vast majority of first-time, native roofing laborers leave their jobs within two weeks, even at entry-level wages of $3.75-$4.50 per hour. Employers have responded by seeking a more stable, low-turnover workforce of undocumented workers.14

Wayne Cornelius, who now heads the University of California at San Diego's Center on U.S.-Mexico Studies, and a number of associates have initiated a series of long-term studies designed to ascertain the way in which immigrant-dominated labor markets function. Cornelius is seeking to move beyond simple questions of the existence/level of displacement and wage depression to more sophisticated and complex questions of why immigrant-dominated labor markets function in certain ways. While their research is not yet complete, Cornelius, et. al., have found that:

> ...there is not one but many different paths to reliance upon immigrant labor. One category of firms and industries consists of those that have always been immigrant-dominated.... They have never employed significant numbers of non-Mexican workers, at least in lower-level production jobs. Examples would be seasonal agriculture, the poultry industry, and shoe and leather manufacturing.

> Another category of immigrant-dominated firms are those in which the employers have had what they regard as negative experiences with alternative (non-immigrant) labor sources, like Anglo teenagers, blacks, or Indochinese refugees. These firms turned to Mexican immigrants in order to boost productivity, improve labor discipline, reduce absenteeism, or to stabilize their work force, since Mexican immigrants are likely to stay longer in the jobs for which they have initially been hired.... Restaurant owners, in particular, seem to have experimented with non-Mexican workers for menial jobs...but found them wanting, or could not retain them in these jobs.
>
> In another category of firms and industries, there was at one time a sizable presence of legal resident workers, but the influx of undocumented immigrants since the mid-1960s has caused them to be Mexicanized. The entry of large numbers of undocumented workers into these industries seems to have caused a gradual decay of labor standards and wage levels, provoking an exodus of legal immigrant workers.
>
> Another, much larger stratum of firms has gone to heavier reliance on undocumented immigrant labor because of intense competitive pressures.... These are the firms that have been "driven to the wall" by competition.... Examples in California would be small foundries and shoe and leather manufacturing firms.15

Cornelius has identified other key aspects of immigrant dominated labor markets. One is the "de-skilling" phenomenon. Cornelius explains:

> In still another class of firms and industries, technological innovations have made it possible to disperse and deskill large numbers of production jobs.... If the firm can divide up its production process sufficiently, it can move quickly to the end of the [product] cycle, dispensing with the middle stage of skilled labor. This has happened increasingly in electronics, but even in far less technologically sophisticated industries like poultry, [and] even some of the service sectors and the construction industry.16

This phenomenon results in the increasing use of subcontracts between well-established, often highly unionized firms and small, often immigrant-dominated firms. According to Cornelius, many of these smaller firms are:

> ...part of the underground economy, paying few or no taxes and avoiding other contacts with government agencies. They are extremely abusive and hyperexploitative of their workers, offering no job security and no opportunities for upward mobility.17

III. EFFECTS ON NATIVE BLACK WORKERS

One variant of the displacement thesis is the idea that undocumented workers have a disproportionate, negative effect on Black and other disadvantaged native workers. Ray Marshall, for example, has noted that:

> ...the costs [of illegal immigration] include increased inequality of income between advantaged and disadvantaged persons in this country -- inequality resulting from the increased job competition and depressed wages and working conditions for the almost 30 million low-skilled U.S. workers who compete directly with illegal immigrants.18

Some predominantly Black organizations, including the National Association for the Advancement of Colored People (NAACP), also contend that undocumented workers displace Black workers to a significant degree.

George Borjas, an economist with the University of California at Santa Barbara, has concluded that Hispanic immigrant labor and non-Hispanic labor are generally not "interchangeable," i.e., these two groups do not generally compete for the same types of jobs. Based on analyses of the 1970 Census and the 1976 Survey of Income and Education, Borjas suggests that:

> The data clearly show that the entry of Hispanics in the local labor market did not lead to a decline in black earnings and employment, or in the earnings of any other non-Hispanic group. Rather, the emergence of Hispanics as a large group in the labor market may have

> led to a small increase in black earnings and employment. These results clearly show that the conventional wisdom of Hispanics "taking jobs away" from blacks is not supported by the data.[19]

Muller's research verifies Borjas' conclusion that increases in Hispanic immigrant workers do not appear to adversely affect Black employment or earnings. Muller notes that:

> Our examination of black unemployment rates and the concentration of Hispanics in more than 230 large metropolitan areas across the country shows no statistical relationship between the size of the Hispanic population and black unemployment.... An analysis of the black unemployment rate and the size of the Mexican immigrant population in Southwestern metropolitan areas indeed suggests a negative relationship.[20]

The one subgroup that would appear to be the most vulnerable to increased job competition from the relatively unskilled undocumented workforce is Black teenagers. However, Muller found that:

> Even the job prospects for black teenagers do not appear to be adversely affected by the influx of immigrants. Total teenage unemployment in Southern California is close to the national average, but unemployment among black teenagers is substantially lower than average.[21]

Muller also found that earnings of Black workers were not affected by increased immigration:

> Within California, income gains for blacks were greater in Los Angeles County than in the metropolitan areas with few Hispanic immigrants.... This pattern is not limited to California. Blacks in San Antonio, a city with a large Hispanic labor force, had the highest income increases of any large metropolitan area. Blacks in Houston also progressed rapidly.[22]

IV. INTERPRETING THE RESEARCH

A. Overview

The apparent lack of consensus among researchers on the displacement issue is clearly reflected in the debate over immigration policy. Advocates for restrictive immigration policies have embraced the view that undocumented workers cause widespread displacement, both directly and indirectly, through the lowering of wages and labor standards. These advocates consistently cite Briggs, Marshall, et. al., to support their position.

Opponents have taken the opposite view. Initially, these opponents of restrictive immigration policies cited Piore and Cornelius to support their position that the undocumented take jobs that "Americans don't want." More recently, these advocates have relied on Muller's research to refute the displacement thesis.

Yet, advocates on both sides have been unable to articulate strong methodological challenges to their opponents' studies. Advocates and policy makers have either ignored research that is inconsistent with their views, or have advanced ad hominem attacks against their authors. For example, the Federation for American Immigration Reform (FAIR), while dismissing Cornelius as "an apologist for illegal immigration," has never advanced a cogent rebuttal to his findings.[23] FAIR has also cited Muller's findings about wage depression in immigrant-dominated industries in its publications while omitting his conclusions about the positive net contributions of immigrants to the economy of California.[24]

Both sides have apparently failed to recognize the essential truths, notwithstanding the limitations, of their opponents' positions. The following analysis is an attempt to integrate elements of the Briggs-Marshall-North and the Priore-Cornelius-Simon schools of thought, consistent with the latest empirical data.

B. Analysis

The question of whether any displacement takes place is essentially moot. As Simon and Moore point out:

> Indeed, _some_ displacement _must_ occur [as a result of immigration]. Unless immigrants immediately become self-employed, for a time they necessarily increase competition in the labor force. Some natives must therefore find it temporarily harder than otherwise to find or keep a job.[25]

Nor, for that matter, is there much question about the initial effect of increased labor market competition on wages. All the empirical studies, consistent with Marshall's theoretical analysis, show that wages in immigrant-dominated sectors of the economy are lower than would be expected otherwise.

The reverse is also true; that is, no displacement can occur unless some native workers choose not to accept some jobs. Rutgers University economist Mark Killingsworth explains:

> ...so long as native labor will work no matter how high or low the wage is, no displacement of natives by immigrants can possibly occur.[26]

When the effects of undocumented immigration are analyzed in isolation, as per the Briggs-Marshall-North approach, one cannot avoid the conclusion that both displacement and wage depression take place. This approach, however, fails to take into account compensating factors accompanying influxes of undocumented workers that tend to offset at least to some degree the initial wage depression and displacement effects caused by the undocumented. These compensating factors include:

- _Increased demand_: As consumers, immigrants inevitably increase demand for all goods and services. Moreover, as Cardenas, et. al. found, they tend to contribute to the growth and expansion of certain "ethnic enterprises" which employ immigrants, and have substantial immigrant clienteles. The entire economy benefits, and job opportunities for natives in the general economy are enhanced. North has documented that many immigrants send substantial sums of money "back home." When these remittances are taken into account, it appears that immigrants are equivalent to about three-quarters of a native consumer.

- _Increased Productivity_: If defined as increased output per unit of labor costs, then the lower wages paid to the undocumented, by definition, increase productivity. Consider the following examples:

    - In traditionally immigrant-dominated industries, which might disappear altogether without the presence of undocumented workers, the influx of such workers helps to retain the complementary white-collar and managerial jobs in that industry. Virtually all the upper-tier jobs are held by natives.

    - Manufacturing firms that would otherwise relocate or go out of business due to high labor costs and foreign competition are retained, and possibly even grow. Job losses for both natives and immigrants are avoided.

- _Lower Prices_: Goods and services provided by immigrant-dominated firms have lower prices to reflect the reduced cost of labor. The cost of living is reduced and domestic goods remain competitive with foreign imports, with concomitant benefits for both natives and immigrants. Since immigrants themselves absorb most of the effects of lower wages, natives benefit disproportionately from lower prices.

Not all of these factors can be quantified individually, but Muller has shown that the benefits from increased productivity in an area such as Southern California can be significant:

> ...perhaps 52,000 low-wage jobs in highly competitive manufacturing industries would not exist if Mexicans were not present.... There is little question that, when all factors are considered, Mexican immigrants are a definite plus to the local economy.[27]

But what about the "good" jobs? Muller found that white-collar jobs in Los Angeles during the 1970-80 period grew at a rate about one-third higher than the national average. Of the more than 220,000 new white-collar jobs created in Los Angeles during that decade, Muller concluded that about 62,000 were filled by immigrants. Thus, the expansion of low-wage manufacturing jobs -- at least partially attributable to immigration -- helped to provide white-collar employment opportunities for about 152,000 native workers.[28]

Cornelius' work on the deskilling and subcontracting phenomenon helps to explain the benefits that native blue-collar workers accrue from the presence of illegal immigrant workers:

> ...the competitiveness of many large, upper-tier businesses in which immigrants do not predominate in the workforce depends increasingly on their ability to subcontract work to smaller firms that _are_ immigrant dominated.... As international pressures increase, well-paying unionized jobs in the mainstream firms are being protected by a buffer of non-union, immigrant dominated firms. In other words, "bad" jobs are protecting not an insignificant number of "good" jobs in the U.S. economy.[29]

Yet the influx of immigrant workers does appear to have some negative effects on unskilled, disadvantaged, predominantly minority workers. Borjas, Muller, and others have not been able to discern a relationship between immigration and Black unemployment rates. There is, however, no doubt that many unskilled Blacks, Hispanics, and other disadvantaged workers were, at one time, displaced from the low-wage manufacturing and service sectors. In addition, as Briggs, Marshall, et. al. theorized, Muller's data confirm that wages in the immigrant-dominated industries are lower than would be expected if no undocumented immigrants were present.

How, then, can these seemingly incompatible sets of facts be reconciled? Consider the following analysis:

- A significant, but unknown, number of low-wage service and manufacturing jobs have been retained in areas like Southern California due to the influx of undocumented workers. Native Blacks and Hispanics hold a lower percentage of these jobs than might otherwise be expected, due to direct job competition from immigrants. Wages and labor standards are lower than in non-immigrant-dominated industries. Overall, in comparison with areas with few immigrants, more manufacturing and service jobs exist, retaining about the same absolute number of job opportunities for native disadvantaged workers, despite the declining percentage of native workers holding these jobs.

- A significant number of complementary white-collar and skilled blue-collar jobs are retained and/or created in part due to the expanding number of highly productive lower-tier jobs. Native Black and Hispanic workers fill an increasing proportion of these "good" jobs, many of which would not exist without the presence of undocumented immigrants, offsetting some effects of displacement.

- Increased demand for consumer goods and services caused by the immigrant influx and by rising incomes stimulates job growth in retail, clerical, and non-immigrant-dominated service industries. Most of these positions require proficiency in English, and are therefore limited almost exclusively to native or legal workers, including increasing numbers of blacks and Hispanics who might otherwise be competing for unskilled manufacturing and service jobs.

In this scenario, some native Blacks and Hispanics are negatively affected by the immigrant influx, through the loss of job opportunities in unskilled blue-collar and service industries. Those native workers that remain in those industries are hurt also by lower wages and deteriorating wage standards. At the same time, however, other, upwardly-mobile native Blacks and Hispanics find greater opportunities for "good" jobs. Muller explains:

> The influx of unskilled workers [in California] enabled the number of professional and other skilled jobs to grow, providing opportunities for native-born English-speaking workers, including minorities, to improve their work status.... [W]e found substantial occupational progress among blacks, particularly among black women. The number of blacks in professional occupations doubled; the number in low wage occupations either remained stable or declined.[30]

During this period, the demand for goods and services overall creates additional employment opportunities for all native workers. Disadvantaged workers are benefitted especially by growth in retail, clerical, and some kinds of service jobs, e.g., fast food, government jobs. Thus, although certain groups of native workers are displaced directly, and others suffer from depressed wages and working conditions, other members of these groups benefit. This appears to be one plausible explanation for the apparent contradiction between the intuitively obvious and logical arguments advanced by Briggs, Marshall, North, et. al., and the as yet unchallenged empirical findings of Muller, Simon, Cornelius, et. al.

Moreover, elements of the Piore-Cornelius dual labor market theory are verified in much the same way. Little in the way of direct or indirect displacement seems to occur in the industries that have traditionally been immigrant-dominated. Moreover, no true displacement takes place in the ethnic enclave firms that owe their existence to the presence of large immigrant populations. Finally, for some manufacturing and industries that are becoming immigrant-dominated, displacement may have occurred at one time, but even the removal of the undocumented from the labor force would not increase jobs for natives, since most of these firms would relocate or go out of business in the absence of undocumented workers. These jobs, once in the upper (or at least middle) tier of the segmented labor market, have been transformed by illegal immigration into jobs that "Americans don't want."

V. CONCLUSION

This Issue Brief is an attempt to provide a straightforward analysis of the major research on this issue. For too long, both sides of the debate over employer sanctions have found refuge in theories that support their pre-determined positions, irrespective of the empirical data.

The recent research findings show that, while immigrant inflows do result in wage depression, erosion of working conditions, and job displacement in some industries, the net, macroeconomic effects of recent immigrant flows appear to be neutral, or even positive.

Another significant research finding involves the the differential effects that immigrant workers have on various industries. Given that there are different paths to reliance on immigrant workers which vary according to industry, and perhaps geography as well, this finding should not be surprising. Yet many advocates persist in characterizing the effects of immigrant labor in very general terms, or attempt to attribute the specific effects of immigrant workers on a single industry to the entire labor market. The next generation of research should more clearly identify the effects of immigrant workers on wages and job opportunities for natives in specific industries and locations.

This analysis of recent research demonstrates that there is considerable merit in both sides of the debate over the displacement issue. This recent research presents an opportunity to direct the policy and legislative debate on the immigration issue away from ideology and toward a greater, more critical understanding of the empirical data.

For more information, or copies of the cited material, please contact Charles Kamasaki or Dan Purtell at (202) 628-9600.

ENDNOTES

1 Cornelius, Wayne A., "The Role of Mexican Labor in the U.S. Economy: Two Generations of Research," mimeograph, University of California at San Diego, La Jolla, California, July 27, 1984.

2 Marshall, F. Ray, "Illegal Immigration: The Problem, The Solutions," Federation for American Immigration Reform, Immigration Paper III, August, 1982.

3 U.S. Department of Labor, "The Economic Implications of Immigration: Labor Shortages, Income Distribution, Productivity, and Economic Growth, prepared for the Select Commission on Immigration and Refugee Policy, August, 1981.

4 Thompson, Robert L., testimony on behalf of the U.S. Chamber of Commerce, Senate Hearings, Committee on the Judiciary, 97th Congress, First Session, September 30, 1981.

5 Stammer and Valle, "Most Aliens Regain Jobs After Raids: Survey Contradicts INS Findings That Sweeps Succeeded," *Los Angeles Times*, August 1, 1982.

6 Smith and Newman, "Depressed Wages Along the U.S. Mexico Border: An Empirical Analysis," *Economic Inquiry*, January 1977.

7 Huddle, Donald A., "Undocumented Workers in Houston Non-Residential and Highway Construction: Local and National Implications of a Field Survey," unpublished paper, Rice University, Houston, Texas, revised June 1, 1982.

8 Flores, Estevan T., "The Impact of Undocumented Immigration to the U.S. Labor Market," unpublished paper, Chicano Studies Research Center, University of California at Los Angeles, April 21, 1983.

9 Muller, Thomas, *The Fourth Wave: A Summary*, (Washington, D.C.: Urban Institute Press), 1983.

10 Simon and Moore, "The Effect of Immigration Upon Unemployment: An Across-City Analysis," unpublished paper, University of Maryland, College Park, Maryland, 1984.

11 Greenwood, Michael J., "Regional Economic Aspects of Immigrant Location Patterns in the United States," *U.S. Immigration and Refugee Policy*, Mary M. Kritz, ed., (Lexington, Massachusetts: D.C. Heath and Company), 1983.

12 Ibid.

13 Cardenas, de la Garza, and Hansen, "Mexican Immigrants and the Chicano Ethnic Enterprise: Reconceptualizing an Old Problem," unpublished paper, Center for Mexican American Studies, University of Texas at Austin, June 1984.

14 Lemons, Gary, "Roofing Careers in Albuquerque, New Mexico: An Analysis of Legal and Undocumented Labor," University of New Mexico, Albuquerque, New Mexico, March 1983.

15 Cornelius, op. cit., "The Role of Mexican Labor in the U.S. Economy: Two Generations of Research."

16 Ibid.

17 Ibid.

18 Marshall, op. cit., "Illegal Immigration: The Problem, The Solutions."

19 Borjas, George J., testimony at House Hearings, Subcommittee on Census and Population, Committee on Post Office and Civil Service, 98th Congress, First Session, September 13, 1983.

20 Muller, op. cit., *The Fourth Wave: A Summary*.

21 Ibid.

22 Ibid.

23 Conner, Roger, in a roundtable discussion on illegal immigration for WJLA-TV, Washington, D.C., October 24, 1984.

24 Federation for American Immigration Reform, "Immigration: The California Picture," FAIR Immigration Report, May 1984.

25 Simon and Moore, op. cit., "The Effect of Immigration Upon Unemployment: An Across-City Estimation.

26 Killingsworth, Mark, "Effects of Immigration into the United States on the U.S. Labor Market: Analytical and Policy Issues," op. cit., *U.S. Immigration and Refugee Policy*.

27 Muller, op. cit., The Fourth Wave: A Summary.

28 Ibid.

29 Cornelius, op. cit., "The Role of Mexican Labor in the U.S. Economy: Two Generations of Research."

30 Muller, op. cit., The Fourth Wave: A Summary.

ATTACHMENT B

MEMORANDUM

TO : Interested Parties
FROM : Charles Kamasaki and Dan Purtell
SUBJ : Employer Sanctions and Job Discrimination
DATE : June 17, 1985

I. INTRODUCTION

Several immigration reform proposals now before Congress include employer sanctions -- a system for penalizing employers who knowingly hire, recruit or refer for a fee undocumented aliens. In the House, Representatives Lungren (R-CA) and Smith (R-NH) have introduced H.R. 1061 and H.R. 2267, respectively; in the Senate, S. 1200 was introduced in late May by long-time immigration reform sponsor Senator Alan Simpson (R-WY). These proposals have raised concerns among Hispanic groups, who oppose sanctions because they are inherently discriminatory (see, National Council of La Raza Issue Brief, "Employer Sanctions and Employment Discrimination," August 1983). Arguments around the discrimination issue have, in the past, centered on theoretical considerations, involving the ways in which employers were likely to react to the provisions, rather than on empirical, "real world" evidence of actual employer responses.

A growing body of evidence suggests that the relationship between employer sanctions and increased employment discrimination is real. This memorandum briefly analyzes and presents empirical evidence of sanctions-related employment discrimination.

II. THEORETICAL CONSIDERATIONS

A. Employer Responses to Sanctions

Experience in labor markets and employment practices suggests that efforts to monitor and control the hiring process will bring about different types of reactions from different types of employers. It is reasonable to assume that many employers would comply with employer sanctions in completely nondiscriminatory ways. Others, however, are likely to act in ways that would have the effect of job discrimination. For example, those employers who would be inclined to discriminate anyway would be provided a legal pretext for such discrimination. If legislation passes, these employers will be given an affirmative defense against discrimination charges, since they could contend that they had not been satisfied that the applicant was legally eligible to work.

A second group of employers may discriminate through good faith efforts to comply with sanctions statutes. Employer sanctions would create within applicant pools a subgroup of persons who, on the basis of physical characteristics, language, or other factors, appear to be "foreign" to employers. Employers seeking to avoid sanctions, as well as those who want to avoid burdensome paperwork, may choose not to hire Hispanics or other "foreign-looking" applicants.

Given the complex, subjective nature of the hiring process, it is unclear how all employers will react to sanctions. However, because of the way the threat of substantial penalties is likely to affect the process -- because it will be much easier to avoid hiring "risky" individuals -- discrimination related to the employer responses outlined above would very likely occur in a considerable number of cases.

B. Uniform Verification Standards

Almost all of the major proponents of employer sanctions have consistently maintained that, in order to avoid discrimination, employers must be required to inspect and record the documents of all hired individuals. This process -- the inspection of work authorization documents for all new hires -- is known as uniform verification. Proponents argue that uniform verificattion will eliminate the possibility of employers verifying the eligibility only of "foreign-looking" applicants, and thus prevent differential treatment of certain applicants during the hiring process. Father Ted Hesburgh, Chairman of the Select Commission on Immigration and Refugee Policy, has been one of uniform verification's strongest advocates:

> ...having concluded that an employer sanctions law is necessary, the essential question is how to make such a law work without having it discriminate against minority groups, disrupting the workplace or placing too great a burden on employers and eligible employees. The answer lies in some reliable method of employee identification which all of us who are eligible would have to produce when we applied for a job. (Select Commission Final Report, 3/1/81; emphasis added)

While Father Hesburgh and many others have proposed uniform verification as a preventative measure against potential discrimination, previous legislation has not fully incorporated all of the elements of the uniform verification process. For example, under verification provisions of last year's Simpson-Mazzoli bill (H.R. 1510/S. 529), employers would have been required to verify eligibility only for all hires; uniform verification standards would not be required for all applicants, thus allowing employers to "screen out" applicants who appear "foreign." Second, penalties for violations of uniform recordkeeping provisions were substantially lower than those related to the knowing hire of undocumented aliens. Thus, the incentive to "play it safe" and avoid large fines would outweigh incentives to uniformly verify and record all documents. Finally, convictions and penalties for mere recordkeeping violations would be very unlikely if, as would often be the case with discriminating employers, no undocumented aliens were actually hired.

Theoretically, uniform verification might partially alleviate discrimination. No bill introduced to date, however, has included all of the key elements of a uniform verification system.

III. EVIDENCE OF EMPLOYMENT DISCRIMINATION RESULTING FROM EMPLOYER SANCTIONS

A growing body of evidence strongly suggests that, when faced by complicated hiring restrictions carrying heavy penalties, employers, especially small businesspersons, are confused about their actual liability. Daniel Leach, former Vice-Chair of the Equal Employment Opportunity Commission (EEOC), has pointed this out in reference to employer sanctions:

> The smaller employer is perhaps where some of the problems in Title VII remain most severe: those that lack the sophistication, don't understand the law, choose not to deal with the law. That's a problem for EEOC as it is. I'm sure it would be a problem and continue to be a problem with any legislation that's proposed in [the employer sanctions] area. (The Tarnished Golden Door, p. 63)

Due to their confusion and uncertainty, many employers over-react, and take overly zealous measures to ensure compliance with immigration laws. For example:

- After Project Jobs, a country-wide sweep operation conducted by the INS in 1982, Time magazine reported that employers involved in the over 300 raids were reluctant to rehire even those workers who proved their legal status to INS officers.
- Although under proposed legislation sanctions would apply only to new hires, Ed Ryan, Vice President of Star Kist Foods, last year reported laying off workers suspected to be undocumented to avoid disruption; another manufacturer laid off over 30 "suspect" immigrant workers as a precautionary measure.

Colleen Logan, a high-level official in the California Department of Industrial Relations, attested before the U.S. Commission on Civil Rights (USCCR) to the discrimination related to this confusion. The USCCR reported that:

> As she put it, 'I can't say that they did [understand what to screen for], because I really didn't understand it totally.' She further testified that the response of some employers was to screen employees on the basis of 'the color of their skin or their speech accent.' (The Tarnished Golden Door, p. 64)

Specific examples of this type of discrimination were reported during House consideration of the Simpson-Mazzoli bill last year, as employers began to prepare for the enactment of sanctions legislation. The effects of these employer reactions ranged from differential treatment to denial of employment based on skin color or accent. Some examples:

- Bernard Brown, vice president of the Coalition of Apparel Industries, told the Los Angeles Times in mid-1984 that, to prepare for employer sanctions laws, the 600 employers he represented were instructed to ask applicants who were "'Latinos or look[ed] like Latinos'" for immigration documents.
- The director of a large manufacturing plant has confirmed that verification processes led directly to discrimination: "'I hate to say this, but I'm sure there have been a lot of times that I've discriminated against Latinos. Sometimes you just don't have time to wait .... If I have four applicants for a job, I would naturally incline toward the one that's not Latino .... Most employers would rather play it safe ....'" Because of these new screening processes, Hispanics dropped from 75 percent to 50 percent of the company's workforce. (The Los Angeles Times, 6/19/84)
- In Dallas, Texas, an apartment manager who apparently believed that the legislation would require evictions of undocumented aliens served notice to tenants that all who could not document legal immigrant or citizenship status would be reported to the INS.

Employers in these examples did not act with intent to discriminate. They responded to the threat of penalties by "playing it safe"; in the process, Hispanic job applicants were put at a serious disadvantage, and in many cases were denied employment.

Arguments that imposition of employer sanctions will increase employment discrimination have moved from a theoretical to a factual base. It is already known that some employers will react to sanctions in discriminatory ways. The only question is one of the scope of this discrimination.

IV. POTENTIAL SCOPE OF DISCRIMINATION

It is not argued here that employer sanctions would lead all employers to discriminate against all Hispanic applicants. Many employers probably will not discriminate; others would discriminate absent the pretext which sanctions provide. But, as shown above, some will undoubtedly discriminate due to sanctions. How many Hispanics will be "at risk" of sanctions-induced employment discrimination?

Simple, albeit rough, analysis of the Hispanic workforce in the United States provides some guidance in this respect. The total Hispanic workforce comprises just over six million persons. Assuming the current Hispanic unemployment rate of 10.7 percent, and assuming that roughly 25 percent of this proportion are looking for jobs on any given day, it can be estimated that over 150,000 Hispanic workers will come into contact with employer sanctions each day. According to some recent estimates, small firms hire up to 1.5 million full- and part-time workers weekly -- roughly 750,000 in states with large Hispanic populations. Thus, as many as 150,000 Hispanic jobseekers potentially will be affected by employer sanctions each week, as they compete for 750,000 available small business jobs.

Senator Alan Simpson, a key proponent of sanctions, has argued that "90 percent of all employers" will comply with recordkeeping and verification requirements. Even if this were true, some 15,000 Hispanic workers would be competing for 75,000 jobs offered by small employers who are most likely to be confused by those sanctions provisions designed to reduce discrimination. Small businesspersons' demonstrated tendency to "play it safe" while hiring would thus place some 15,000 unemployed Hispanic applicants "at risk" every week.

V. CONCLUSION

The National Council of La Raza opposes employer sanctions, because such sanctions would have little effect on the flow of undocumented immigration while seriously jeopardizing many thousands of Hispanics and other "foreign-looking" job applicants. Convinced that any sanctions statute would inevitably lead to discrimination, the National Council strongly supports measures which provide redress for those whose civil rights are violated under new enforcement programs. In the past, Senators Gary Hart (D-CO) and Carl Levin (D-MI), and Representatives Augustus Hawkins (D-CA) and Barney Frank (D-MA) have offered amendments to sanctions legislation which sought to provide victims of sanctions-related discrimination an effective means of seeking redress. To the extent that sanctions legislation is enacted, La Raza believes that effective redress systems are an essential element of such legislation.

The National Council of La Raza continues to closely monitor incidents of job discrimination related to enforcement of immigration laws.

ATTACHMENT C

Date March 1984
Title EFFECTIVENESS OF LABOR LAW ENFORCEMENT IN DETERRING ILLEGAL IMMIGRATION
Contact Charles Kamasaki/ Martha Escutia (202) 628-9600

EFFECTIVENESS OF LABOR LAW ENFORCEMENT IN DETERRING ILLEGAL IMMIGRATION

I. INTRODUCTION

The immigration debate is heating up in light of imminent action to be taken by the House with regard to this issue. Proponents of the Simpson-Mazzoli bill (HR 1510) have attacked the enforcement provisions of the alternative legislation that has been introduced by Congressman Roybal. The Roybal bill (HR 4909) relies on a wide spectrum of labor law enforcement rather than employer sanctions as a means to curb illegal immigration. Since labor law enforcement has long been posited as an alternative to sanctions, arguments and responses should be clearly defined so that the debate is founded on substantive rather than rhetorical grounds.

II. ARGUMENTS

The Federation for American Immigration Reform (FAIR) and others have argued against the effectiveness of labor law enforcement in the following manner:

A. Immigration and Naturalization Service (INS) data show that about 70% of aliens apprehended report receiving the minimum wage or higher. Therefore, enforcement of labor laws will not reduce employers' incentives to hire the undocumented.

B. Labor law enforcement has been tried before and it doesn't work. A 1981 GAO study concluded that the Department of Labor's (DOL) 1977 program to deter the use of the undocumented by enforcing labor laws was ineffective, and that employer sanctions were needed to stop the hiring of unauthorized workers.

C. Labor law enforcement will, even if effective, fail to cover all firms. Unless all, or most, firms are covered, aliens will still find jobs and illegal immigration will continue. It has been argued that anything short of sanctions will not be effective in stemming the flow of the undocumented workers.

   - Proponents of the Simpson-Mazzoli bill argue that removal of the Texas proviso and a clear, definitive ban on the hiring of undocumented workers is the only means of effectively reducing illegal immigration.

III. RESPONSES

A. Whether undocumented workers receive minimum wages or higher:

1. The 70% figure is by no means definitive. First, previous studies have shown much lower wage rates for samples of the undocumented than the INS data (See, North-Houston Study, 1976). Second, it is widely known that INS is concentrating its enforcement efforts on those industries that have "jobs Americans want," i.e., those that tend to pay relatively high wages; thus, INS' data are skewed to reflect these higher wages. Finally, little is known about the reliability of the INS data. It is possible that apprehended aliens are attempting to protect their employers so that their jobs will be open if they return.

2. Enforcement of labor laws goes far beyond minimum wage enforcement. The Roybal bill covers all wage-and-hour violations including the failure to pay overtime, OSHA, and National Labor Relations Act. Violations of these laws save employers as much -- if not more -- than minimum wage violations. The 1979 DOL Noncompliance Survey found, for example, that violations of overtime provisions were more common than minimum wage violations (21.1% vs. 4.9% of the surveyed firms). Moreover, overtime violations resulted in underpayments of $11.2 million; violations of the minimum wage resulted in only $3.9 million in underpayments. The Roybal bill is more comprehensive in that it attacks a wide spectrum of labor law violations which save employers sizeable amounts of money. By enforcing labor laws and preventing violations, the Roybal alternative kills the employers' incentive to hire the undocumented rather than citizens or legal residents.

3. There is documentation that industries that hire large numbers of undocumented do so to avoid compliance with various labor laws. A study by the International Ladies' Garment Workers Union showed that garment manufacturers can save up to $5,000 per worker per year by violating labor laws. (See, Sol C. Chaikin and Phil Comstock, "Toward a Rational Immigration Policy," The Journal, The Institute for Socio-economic Studies, Spring 1982.)

B. Whether labor law enforcement is effective in deterring the use of undocumented workers:

1. The 1981 GAO study indicated that DOL's 1977 program was based on complaints by workers. Because of the fear of arrest and deportation, the undocumented tend not to complain about mistreatment. The Roybal bill provides for a self-directed program, and targets industries based on research into which sectors of the economy have high rates of employment of undocumented workers.

2. The 1977 DOL program referred establishments with suspected undocumented workers over to the INS. This not only deterred employees from reporting labor law violations but also reduced the incentives for workers to cooperate with the DOL program. The Roybal program would not have any INS involvement and should, therefore, have greater cooperation from workers.

3. The lack of penalties for record-keeping hampered enforcement and evaluation of program effectiveness. The FLSA requires employers to keep records that enable DOL inspectors to verify compliance with wage and hour laws. Because there are no penalties for failure to keep records, and because employers could keep erroneous or incomplete records, detection of violations was made more difficult. Record-keeping is said to be especially important in detecting overtime violations, and the lack of record-keeping by employers was cited as one reason for limited program effectiveness. The Roybal bill establishes a new $10,000 penalty for failure to keep proper records, and will, therefore, be more effective in detecting violations.

4. The DOL program was understaffed, and backlogs of cases hindered program effectiveness. The old program included 225 compliance officers, and in many respects, operated as an extension of DOL's regular enforcement program. The Roybal bill, on the other hand, provides for 600 compliance officers operating in a separate unit.

C. Whether labor law enforcement alone, without sanctions, will halt the influx of illegal immigration:

It must be emphasized that the Roybal bill should not be compared to the ideal, rather abstract notion of sanctions, but to the sanctions program as written in the Simpson-Mazzoli bill and as they are likely to be enforced in the real world. When this comparison is made, sanctions look less effective, and the Roybal bill becomes even more credible. Specifically:

1. There are many exceptions in the Simpson-Mazzoli bill which decrease the coverage, and presumably the effectiveness, of employer sanctions:

   - Employers with three or fewer employees are exempted from the verification and recordkeeping requirements under the Senate bill;
   - Employers hiring workers on a day-to-day or casual basis are similarly exempted in the House bill;
   - Agricultural employers have the 3-year transition program under which they may continue to use undocumented workers in the House version; and
   - All employers are exempted from verification and recordkeeping in the House bill until their first violation (Kindness amendment).

   Given these exceptions, the sanctions program in Simpson-Mazzoli cannot be credibly described as broad, and is certainly less credible than sanctions in the abstract. The Roybal bill will target industries that are most likely to hire and exploit the undocumented. In terms of coverage, there appears to be little actual difference between the two bills.

2. Sanctions have simply never worked anywhere else. They have failed in:

   - Other countries. A 1982 GAO study of sanctions laws in 19 other countries and Hong Kong concluded that they had been ineffective.
   - States. Twelve states now have sanctions laws on the books, and none of them have been effective (thus the alleged need for a federal sanctions law).
   - Agriculture. The Farm Labor Contractor Registration Act includes an employer sanctions provision. This has apparently not worked since agricultural interests got the transition program, an expanded H-2 program, and the Panetta amendments all because of their dependence on undocumented workers.

One state with a sanctions program (California) has abandoned it in favor of what it calls the Concentrated Enforcement Program (CEP) which targets labor law enforcement on firms using large numbers of undocumented workers.

3. Labor law enforcement is more cost-effective than sanctions. Sanctions are very costly in terms of the numbers of visits to employer worksites that will be made to verify compliance. With the same number of compliance officers (600), between 3.5 and 6 times as many employer worksites can be checked under the Roybal bill than under employer sanctions.

    - Per the HR 1510 Report (Judiciary), INS will be able to make 10,000 worksite visits and detain 16,000 individuals under the authorized funding level of HR 1510. This is to be accomplished with about 600 investigation officers. (*See*, Rpt. 98-115, p. 102). This translates into 16.7 worksite visits per investigative workyear and about 26.7 persons detained per workyear.

    - Under the envisioned Roybal alternative, it appears that enforcement of FLSA and OSHA will be much more cost-effective. For example, DOL estimated in 1982 that with 612 compliance officers it would make about 63,000 inspections. This translates into 102 inspections per workyear, or more than six times the efficiency of sanctions. For OSHA, in Fiscal Year 1983, with 1200 inspectors, 68,577 inspections took place. This translates into an efficiency of about 57 inspections per workyear, or about 3.5 times the efficiency of sanctions. (*See*, Rpt. 97-909, p.4). The apparent reason for the fewer visits per inspector under OSHA is that OSHA requires actual physical inspection of the workplace, whereas detection of FSLA violations can take place with inspections of records and worker interviews.

The reasons for the vast difference between sanctions and labor law enforcement are threefold:

- The physical and administrative machinery for labor law violation enforcement is already set up and operating. New machinery would have to be set up for sanctions.

- Similarly, significant economies of scale would be achieved by adding to existing enforcement, since each added increment of enforcement under existing laws would require only modest increases in administration. Under sanctions, the added enforcement would entail substantial administrative and logistical expenses (aside from start-up costs).

- Finally, sanctions will apparently require inspection of the documents of suspect employees and the appropriate records. In addition, because sanctions are focused on violations with respect to individual employees, and since detention of undocumented individuals will have to take place, they are much more time consuming than wage and hour violation, where a compliance officer can issue a citation on the spot.

IV. CONCLUSION

To the extent that deterrence is based on fear of detection, we can expect that that the enforcement provisions of the Roybal bill will be more effective than employer sanctions as contemplated under the Simpson-Mazzoli bill. In addition, unlike employer sanctions, the Roybal bill will not create employment discrimination against "foreign-looking" persons, and will extend additional labor protections to many citizens and legal residents that are employed in the effected industries. Furthermore, labor law enforcement is less burdensome on business enterprises (whether large or small) because compliance will be determined by the records that are required to be kept under current law, whereas sanctions would require business concerns to collect new records such as workers' documentation.

even successful prosecutions would affect fewer undocumented persons and would, therefore, be less cost-effective than might otherwise be expected. Third, the combined effect of subcontracting and the lowering of wage standards would probably have the effect of "driving out" legal aliens and native workers from some economic sectors, thus increasing rather than decreasing the demand for undocumented workers. Finally, the fact that undocumented workers are concentrated in many high-growth industries in some of the nation's most dynamic locations (California, Texas) suggests that even if the rate of hiring of such workers were reduced by sanctions, the absolute number of such workers might increase.

D. Commission Certification

1. Overview

This section examines the conditions that the Commission must certify before the implementation of a legalization program, and analyze the likelihood of such a certification. The three conditions required to trigger legalization relate to the "substantial" control of illegal entry, prevention and deterrence of visa abuse, and elimination of employment of unauthorized aliens. Two initial observations are relevant with respect to these pre-conditions. First, there is no mention in the legislation of the data that the Commission would use to make the required certifications. Second, none of the key operative terms, e.g., "substantially," "control," is defined. Thus, any in-depth analysis of the likelihood of the certification of the pre-conditions is, by definition, highly speculative.

Nevertheless, there appear to be several conceptual flaws inherent in the trigger concept, which deserve some exploration. For the purposes of this section, it is assumed that sanctions can be effective; the focus of this analysis is on the difficulty of measuring -- and therefore certifying -- this presumed effectiveness.

In the absence of specific definitions for the key operative terms embodied in S. 1200's trigger mechanism, one assumes that the literal meanings of these terms would be used by the Commission in its deliberations. Even this assumption poses new questions, however. For example, it is not clear whether the Commission's standards would require relative or absolute reductions in illegal entries, visa abuse, and illegal employment. If it is assumed that absolute reductions were required, the baseline measurement could be current levels of illegal entry, visa abuse or illegal employment, prevailing levels of such activity at the time of the Commission's deliberations, or projected levels of such activity in the absence of employer sanctions. If relative reductions were required, the problem of the baseline would still exist; in addition, the Commission could certify future enforcement as effective relative to current enforcement efforts, but absolute levels of illegal entry, visa abuse, and employment of undocumented could rise.

Irrespective of the standards used, the language of the bill demonstrates the difficulty of the Commission's task. First, all three conditions must be met before legalization could be triggered; even if all visa abuse and illegal employment were ended, if illegal entries were not "substantially controlled," legalization would not be triggered. Second, the requirement that employment of unauthorized aliens be "substantially" eliminated suggests an extremely stringent and perhaps impossible standard. Given that sanctions are supposed to apply only to "new hires," and that agricultural employers would be allowed under the transition program to continue to hire some undocumented workers, it is not clear how unauthorized employment could be "eliminated" in any meaningful sense for many years, if at all.

2. Data Availability and Reliability

One of the few areas of consensus on the immigration issue is that no one knows with any degree of certainty the key "facts" underlying the policy debate. Estimates of the numbers of undocumented workers range from 2 to 35 million, and there is considerable disagreement over the labor market impact of these workers. Similarly, estimates of illegal entries tend to be based on multiples of actual apprehensions; some believe that for every one alien apprehended, three or four enter illegally. The difference between the "three" and the "four," in this case, amounts to over a million persons; presumably, the Commission would be interested in narrowing this difference somewhat. Thus, given extreme controversy over the reliability of key data, it is unclear how the Commission would select data sets necessary to measure the effectiveness of enforcement measures.

The best alternative would be for the employer to derive the benefit of noncompliance without incurring any significant degree of risk. It is argued below that most employers who currently rely on undocumented labor would be able to choose the last, most desirable alternative.

For the most part, employers of undocumented workers derive direct, significant economic benefit from these workers. They are paid lower wages, require fewer, if any, fringe benefits, are more reliable, and tend to stay in their positions longer than native workers. There probably are some "accidental" hires of undocumented workers, but most research suggests that the majority of employers who rely on such workers at least suspect that some of their employees are undocumented.

These employers could circumvent the sanctions provisions in numerous ways. The most obvious would be through document fraud. The employer could carry out the verification process and diligently maintain records while continuing to hire undocumented workers. There is widespread agreement that fraudulent documents are easily available in areas with large concentrations of undocumented persons. Many, if not most, undocumented workers already carry such fraudulent papers; the employer could merely "judge" these documents to be genuine when they were presented. One variation of this scheme could have the employer arranging for his/her employe to obtain reasonably good forgeries of key documents.

A second method of evading sanctions would be through subcontracting. Those firms -- especially large, respectable firms -- that feared bad publicity as much as fines could merely subcontract lower-tier jobs to small firms willing to assume the risk of hiring undocumented persons. There is substantial precendent for the use of subcontracting to avoid regulatory enforcement. One major food processing firm in the Midwest routinely "subcontracts" out all farm labor, thus evading farmworker protection legislation. Professor Cornelius has documented widespread and increasing use of subcontracting by electronics firms in California seeking to avoid immigration raids and labor law enforcement.

There is a third alternative for firms that could not easily evade sanctions. Testimony in the California General Assembly after passage of that state's sanctions law revealed that many employers used the law as an opportunity to reduce wages, replace senior workers with younger ones, or require "taxes" or "bonds" of their undocumented employees, ostensibly to cover the risk of sanctions violations. In this way, the risks of noncompliance would be borne by the workers rather than the employer, while, of course, the employer received the benefits of noncompliance. Labor standards in these industries would be further degraded.

Recall the different types of firms dependent on immigrant labor. Each of these has both the incentive and the opportunity to use one or all of the above-listed methods to avoid compliance with sanctions while minimizing its risks. The industries that have traditionally been immigrant-dominated, such as agriculture, already successfully evade the FLCRA sanctions, primarily through subcontracting to farm labor contractors. The contractors, in turn, are careful only to hire those undocumented persons who have fraudulent documents.

Marginal firms which would go out of business without cheap labor would have the greatest incentive to violate sanctions, since they would have no alternative but to utilize the undocumented. Similarly, ethnic enclave firms who owe their existence to the undocumented -- as both a source of labor and as consumers -- would be unlikely to stop hiring persons merely because they didn't have documents; it would be far easier simply to ensure that those who were hired did have some documents. Finally, large, more "respectable" firms would be likely to increase the practice of subcontracting. Manufacturers and contractors already make heavy use of this practice; it is highly probable that service industries such as hotels and restaurants would begin to contract with "crew leaders" and other entities to supply laborers for menial positions.

Given the probable enforcement scheme described above, it is unlikely that sanctions, overall, would significantly decrease the employment of undocumented persons. Even allowing for some residual effect on employers who are currently unknowing violators who would be expected to comply, several factors mitigate against effective sanctions enforcement on a macro-economic basis. First, the relative ease of circumventing sanctions combined with substantial economic incentives for noncompliance suggest that most immigrant-dominated firms would continue to hire the undocumented. Second, the effect of increased subcontracting would increase enforcement problems; instead of raiding a single large manufacturer in the Silicon Valley, the INS would have to seek out many smaller, highly-transient subcontractors. Violators would be more difficult to detect, and

With the exception of the hotel and restaurant sector, it appears that few undocumented immigrants are employed by large firms -- those with personnel departments and formal recruitment and hiring processes. This is especially important since rates of noncompliance with analogous laws like labor laws have historically been higher in small firms than in large ones.

Several other employer characteristics are relevant. It is safe to assume that employers' knowledge of the immigration status of their workers varies greatly depending on the type of industry, geographical location, and other factors. A garment manufacturer in Los Angeles, where it has been estimated that some 80 percent of the workforce is undocumented, presumably knows that many of his/her employees may be illegal immigrants. A construction contractor in Ohio, conversely, may have little reason to question the immigration status of any of his/her employees. This differential knowledge level is also likely to affect the rate of compliance with an employer sanctions law.

2. Enforcement Scheme

For the purposes of this analysis, it is presumed that two types of compliance programs would be pursued by INS. The first would involve targeted, periodic investigations of firms suspected of hiring large numbers of unauthorized workers. It is assumed that these "spot checks" would be targeted in manner similar to current "area control operations" (factory raids). It is unclear how many such investigations could be carried out since S. 1200 does not authorize any specific level of funding for enforcement; however, previous bills have included authorization for 600 new investigators capable of making an estimated 10,000 worksite visits annually (House Report 98-115, accompanying H.R. 1510). By way of comparison, the Department of Labor's Wage and Hour Division currently makes about 63,000 worksite inspections per year, which amounts to less than five percent of covered firms.

A second form of enforcement established in S. 1200 would be a complaint processing system. Individuals, unions, and other parties could file a complaint to the Attorney General alleging a violation of sanctions. The Attorney General would determine whether the complaints, "on their face, have a substantial probability of validity," and could investigate such complaints. It is not clear how many complaints could be expected, or what level of staffing would be required to process these complaints. The Wage and Hour Division currently allocates about 90 percent of its staff time to complaint processing; even so, backlogs are quite high -- up to a year for FLCRA violations in some regions.

In order to have an affirmative defense against charges of sanctions violations under S. 1200, an employer would have to verify that each "new hire" had at least two identification documents that appeared genuine, and keep a record of the act of verification. First-time violators would receive a warning; subsequent violations would lead to graduated civil and criminal penalties.

3. Employer Responses

It is assumed here that all employers would have sufficient knowledge of the sanctions provisions to permit a rational response to the threat of enforcement. Actually, of course, it is likely that many employers, especially small businesspersons, would be confused by the sanctions provisions and might react in irrational or over-zealous ways. The element of confusion is a key factor in arguments over the likelihood of sanctions-related employment discrimination, but need not be considered.

An over-simplification of deterrence theory suggests that employer responses to employer sanctions are likely to be based on the employer's calculation of two variables: the risk of noncompliance measured against the benefit of noncompliance. The risk of noncompliance has two components:

- The employer's perception of the likelihood of detection of a violation; and
- The employer's perception of the likely penalty for a detected violation.

The benefit of noncompliance is essentially the economic benefit derived from a violation (or violations) of the sanctions provision. If the benefits of noncompliance outweighed the risks of being caught, it is assumed that the employer would violate the statute; if the converse were true, the employer would comply.

Of course, it would be helpful to review similar data for sanctions laws in other countries, but these data apparently do not, for the most part, exist (the often-cited General Accounting Office Study of employer sanctions relied on responses by enforcement personnel to questionnaires). Moreover, many of the foreign countries with sanctions provisions require national identification cards or work permits; they have varying enforcement schemes, making strict comparisons with the sanctions provisions in S. 1200 very difficult. Finally, the social, economic, and political environment in the United States is unique in many ways, i.e., proximity to "sending" countries, 2,000-mile border with Mexico, virtual open border with Canada, and a large, growing, dynamic and largely unregulated economy, all of which suggest that the U.S. experience with sanctions is likely to differ from that of other countries, at least in some respects. However, the very factors that make the U.S. environment unique are likely to negatively influence an employer sanctions program. Enforcing a sanctions law on the tiny island of Hong Kong is a far different proposition ~~than enforcing~~ a similar law in this country.

Finally, it should be noted that one highly respected scholar has attempted to systematicaly examine various sanctions models. David North analyzed four different employer sanctions models and identified the varying degrees of cost, recordkeeping, discrimination, and effectiveness associated with each model. The model identified as "least effective" is essentially analogous to the provisions included in S. 1200, i.e., use of multiple existing documents to verify worker eligibility. Further, the verification process included in S. 1200 is a voluntary one, which would presumably reduce the effectiveness of the sanctions. The most effective model identified by North would require a new, national work permit, the establishment of which is precluded by S. 1200. (It should be noted, however, that S. 1200 permits the establishment of "more secure forms of verification" based on existing identifiers, such as the Social Security card.)

C. Employer Responses To Employer Sanctions

1. Types of Employers

Recent social science research has revealed that there are not one but several paths toward reliance on immigrant workers. This research shows that the industries that hire substantial numbers of such workers are extremely varied, and that the historical process leading to "immigrant domination" of an industry is very complicated. Wayne Cornelius of the Center for U.S.-Mexico Studies of the University of California at San Diego has identified several different types of immigrant-dominated firms:

- Some industries have always been immigrant-dominated. These include seasonal agriculture, agriculturally-related processing industries [e.g., canning and packing sheds], and some light industries [shoe producers, leather manufacturers].

- Lower-tier jobs in some service industries [restaurants, hotels] are increasingly immigrant-dominated, in part because of poor performance by non-immigrant sources of labor.

- Lower-tier manufacturers, who in the past relied on native disadvantaged workers [women, minorities] and legal resident aliens have increasingly relied on undocumented immigrants in part because of the easy availability of such workers [garment and textile manufacturers].

- Small, marginal firms in intensely competitive sectors such as construction, small foundries and factories, some services [landscaping, janitorial], and some manufacturing [electronics] rely on immigrant labor.

- "Ethnic enclave" firms owned by immigrants themselves or by second-generation natives [restaurants, commercial and retail] have always been immigrant-dominated.

While some of these firms utilize the competitive advantage afforded by lower-wage immigrant workers to maintain a declining industry (shoe and leather manufacturers, for example), many immigrant-dominated firms are in rapidly-expanding, high-growth sectors like electronics and services. This has critical implications for the effectiveness of sanctions since substantial non-compliance by firms in a growing industry could negate reductions in the employment of undocumented workers in smaller, declining industries.

This memo does not seek to review all the arguments over the efficacy of employer sanctions; rather, it will focus on the ability of the specific employer sanctions provisions in S. 1200 to meet the apparently very stringent conditions required to trigger legalization.

There is surprisingly little research on the effectiveness of employer sanctions from a theoretical perspective, despite the fact that it has been over a decade since Rep. Peter Rodino (D-NJ) first introduced sanctions legislation. Immigration attorneys Charles Smith and Juan Mendez have noted that:

> ...the literature on [employer sanctions] remains relatively small and unsophisticated in light of the extensively applied experience of social scientists, psychologists, and planners working on law enforcement. A review of the employer sanctions literature reveals no significant use of the extensive theoretical and case study work on deterrence done by criminal justice researchers. At the very least, proponents of employer sanctions should feel a scholarly obligation to examine the utility of deterrence knowledge as developed in the criminal justice area in relation to their deterrence claims for employer sanctions...(Smith and Mendez, North Carolina Journal of International Law and Commercial Regulation, 1982).

One sanctions proponent who has carried out considerable theoretical research on this issue is immigration scholar David North of the New Transcentury Foundation; however, North himself has written:

> ...despite widespread interest in illegal immigration and bursts of ethnographic studies regarding the migrants themselves, there has been virtually no work done by scholars on alternative approaches to the enforcement of immigration and related laws (North and Wagner, "Enforcing The Immigration Law: A Review of the Options," New Transcentury Foundation, 1980).

Thus, instead of reviewing the minimal available literature on sanctions, this analysis will utilize recent research findings about the labor market effects of undocumented immigrants as a basis for predicting likely employer responses to employer sanctions.

B. Some Theoretical Considerations

Much of the discussion of the effectiveness issue has been extremely simplistic, treating "employers" as a homogeneous body that hires undocumented workers for the same reasons -- they are cheaper and more docile than native workers. Establishing economic and criminal penalties that appear to outweigh the economic advantages of hiring such workers, it is argued, will remove the incentive to hire such workers. This kind of rather simplistic analysis has led to "estimates" by [Senator Simpson and] Immigration and Naturalization Service (INS) Commissioner Alan Nelson that "90% of all employers will comply" with employer sanctions. Of course, if the ten percent of employers who do not comply hire all the undocumented workers in the country, then even a 90% compliance rate would not affect the level of employment of such workers at all.

Opponents of employer sanctions have been equally guilty of such oversimplification, arguing, for example, that sanctions will have no effect on illegal immigration since "push" factors such as war, political and religious persecution, and other factors are unaffected by sanctions. It is true that most scholars agree that the phenomenon of migration results from the complex interplay of both "push" and "pull" factors, but it is a bit incongruous to argue that the absence of employment opportunities would have no effect on the destination of migrants.

One useful method of predicting overall compliance rates is to examine the experience of analogous laws, such as labor laws. In 1979, the Minimum Wage Study Commission found that five percent of a random sample of 15,000 firms were in violation of the minimum wage provisions of the Fair Labor Standards Act (FLSA), and 21 percent were in violation of overtime provisions. The Commission estimated that five million workers were affected by these violations. The fact that many firms are apparently out of compliance with a well-known, accepted law that has been on the books since 1938 does not bode well for a new, more complicated, controversial law such as employer sanctions.

ATTACHMENT D

MEMORANDUM

TO	:	Interested Parties
FROM	:	Charles Kamasaki, Director of Policy Analysis
DATE	:	June 17, 1985
SUBJ	:	Preliminary Analysis of the "TRIGGERED" Legalization Concept (S.1200)

I. INTRODUCTION

Senate Immigration Subcommittee Chairman Alan Simpson (R-WY) recently introduced the Immigration Reform and Control Act of 1985 (S. 1200), which includes several major changes from previous immigration reform efforts. One of these changes involves a "triggered" legalization program. If enacted, S. 1200 would delay implementation of the legalization program until a Presidentially-appointed Commission certified that employer sanctions and other enforcement programs were in effect and had adequate resources to "substantially":

- Control illegal entry of aliens into the United States;
- Prevent and deter violations of the terms of entry (visa abuse); and
- Eliminate the employment of unauthorized aliens in the United States.

The Commission would also have to certify that "there is a substantial likelihood that these programs will continue to remain in effect after the implementation of legalization...."

Virtually all national Hispanic organizations support legalization, although many of these groups believe that the structure of the legalization programs included in previous reform efforts was inadequate. These concerns are not addressed here. This memo focuses on the efficacy of the trigger mechanism itself, i.e., the likelihood that the bill's enforcement provisions can meet the above-listed pre-conditions for legalization, and the ability of the Commission to certify the effectiveness of enforcement efforts.

II. ANALYSIS

A. Overview

There is substantial controversy over the efficacy of employer sanctions in eliminating the hiring of undocumented workers. Critics of employer sanctions point to the experience of other countries, the 12 states in this country with employer sanctions laws, and the Farm Labor Contractor Registration Act (FLCRA) -- which prohibits farm labor contractors from knowingly hiring or recruiting undocumented persons -- as proof that such sanctions are not effective. Proponents of sanctions generally argue that:

- Most state laws are not analogous to the proposed federal legislation, and these laws have not been enforced. They suggest sanctions can be effective with vigorous enforcement.
- Some employer sanctions laws in other countries have been effective in reducing the hiring of undocumented persons. The most commonly cited example of an effective sanctions law is Hong Kong.

These responses are telling in that they concede several key points, i.e., that state sanctions laws have not been effective, that most of the sanctions laws in other countries have not been effective, and that the only existing federal sanctions law -- the FLCRA -- has not been effective. This does not necessarily preclude the possibility that a sanctions law can be designed that will, with proper enforcement, substantially reduce the employment of undocumented persons, but it has properly raised considerable skepticism of the efficacy of the sanctions concept.

Even assuming the ability of the Commission to reach a consensus on a set or sets of reliable data to assess the effectiveness of enforcement efforts, serious questions remain about the ability of the Commission to satisfy the preconditions for legalization, since factors other than the effectiveness of such enforcement efforts can affect rates of illegal migration and employment. Among these factors are:

- Changes in the international economy, which may affect the "push" factors that stimulate migration.
- Changes in the domestic economies or internal political conditions of the major "sending" countries.
- Changes in economic conditions in this country. For example, illegal immigration to the U.S. has been slowed during recessions and economic slowdowns.

Thus, even if the Commission could identify reductions in rates of illegal entry, visa abuse, and illegal employment, it is not clear what portion of these reductions would be attributable to effective enforcement, domestic economic conditions, or other factors.

Finally, changes in INS deployment and enforcement strategy could greatly affect -- sometimes in unpredictable ways -- the data that the Commission would rely on. Even assuming that baseline measurements could be agreed upon, and that the effect attributable to non-enforcement factors could be assessed for some years, data for subsequent years could be skewed by events as innocuous as the discovery of "bugs" in automated visa control systems, or as momentous as another immigration emergency such as the Mariel boatlift. In 1980, in response to the boatlift, the INS shifted personnel from the U.S.-Mexico border to South Florida. This re-deployment was accompanied by a decrease in apprehensions. It is probably safe to say that the two events were related, but it is simply not possible to quantify the effect of the re-deployment on apprehensions.

The Commission could easily be faced with multiple -- and contradictory -- policy and strategy changes simultaneously. It is easy to envision a situation in which, as in "Project Jobs" in 1982, the INS would carry out high-visibility but low-productivity campaigns for political reasons, while concurrently, improvements in technology at the border and points of entry increased apprehensions. In this situation, apprehensions at the same points might increase dramatically, while apprehensions in the interior and other locations fell. How would the Commission determine whether illegal entries were being substantially controlled in that kind of situation?

In sum, the inherent unreliability and imprecision of data bases, combined with the introduction of unquantifiable variables into already uncertain equations, would make the Commission certification process terribly difficult at best, and arbitrary at worst.

Senator **Simpson**. Thank you very much. We appreciate that.

Mr. Trevino, please.

Mr. **Trevino**. Thank you, Mr. Chairman. Good afternoon. For the record, my name is Joseph M. Trevino and I am executive director of the League of United Latin American Citizens, the Nation's oldest and largest national Hispanic membership organization.

I would like to thank the Honorable Chair, Mr. Simpson, for inviting LULAC to testify today on behalf of our constituents specifically, and Hispanic Americans generally. I also would like to take this opportunity, Mr. Chairman, to express appreciation for the help of your staff, Dick, Carl, and Debbie.

Mr. Chairman, I am indeed privileged to present testimony today on S. 1200 and to be included on a panel consisting of representatives of very worthy organizations providing service to the Hispanic community.

In the first place, LULAC applauds Senator Simpson for omitting from S. 1200 the following provisions: Changes to the preference system for legal immigrants; changes which would cap overall admissions of legal immigrants; provisions dealing with summary exclusion, adjudication of cases by Immigration judges and the Board of Immigration Appeals, judicial review, and asylum processing.

I suspect, Mr. Chairman, that this year's immigration reform bill has omitted some of the controversial measures contained in the version that passed the Senate in an attempt to reduce opposition to its passage.

However, that strategy aside, LULAC remains encouraged by the fact that S. 1200, by inclusion, validates as a deterrent to the exploitation of all workers the concept of enhanced enforcement of Department of Labor laws; expressly calls for an increased appropriation for service related activities; and authorizes a pilot nonimmigrant visa waiver program for up to 8 countries.

These provisions, you may recall, Mr. Chairman, were proposed by groups such as LULAC who support immigration reform but have disagreed with previous Senate bills. Hence, it is our hope that the recommendations we make today will be viewed taking that fact into consideration.

However, the above should not be interpreted as an endorsement of S. 1200. On the contrary, S. 1200 also omits provisions we support and contains provisions which LULAC takes exception to.

In the past, LULAC has taken exception to employer sanctions on the grounds that it would increase employment discrimination against Hispanics and the foreign looking. In addition, employer sanctions, as a unilateral enforcement strategy, does not address the powerful push factors which drive displaced persons to our great country. To allay our concerns about employment discrimination, we have been told that all employers, much to the chagrin of the administration and some business groups, would be required to verify employment eligibility of all new hires. That protection is not included in S. 1200.

S. 1200 fails to give us direction on the larger question of the link between U.S. foreign policy, living conditions in country of origin, and the presence of undocumented in the United States. Supporters of comprehensive reform, including LULAC, have suggested that a package which does not consider push factors is incomplete. LULAC suggests that at a minimum, the proposed Presidential commission be directed to review immigration trends to establish whether or not a correlation exists between U.S. foreign and trade policies vis-a-vis principal countries of origin and numbers of persons seeking entry into the United States.

If this bill were enacted, an essential step would be that the Commission investigate this correlation as well as the question of employer need for guest workers. The Commission should determine if, in fact, this need really does exist, and what correlation exists between U.S. foreign policy and patterns of immigration. It is the least we could do for future Congresses who, along with the President, must forge both foreign and immigration policies.

Apart from the discrimination and push factors, LULAC and others have expressed doubts as to the overall effectiveness of employer sanctions in substantially reducing the flow of people to our country.

Throughout the debate, many growers expressed their fear that employer sanctions, coupled with legalization, would pull the workers off the farm, so to speak.

During World War II and the Korean war, a similar fear of labor shortages prompted Congress to establish the bracero program. Bracero workers continued to enter this country until 1964. At its peak, the program provided nearly 500,000 foreign workers per year.

In recent years, the dependency on bracero workers has evolved into a dependency on undocumented workers. Warnings have been issued repeatedly against this dependence.

In 1951, the Truman Commission called for future efforts to be directed toward eliminatory dependence on foreign labor.

In 1981, the Hesburgh Commission called on the government, employers, and unions to cooperate to end the dependence of any industry on a constant supply of H-2 workers.

To make the transition from a foreign workforce to a domestic workforce, we must upgrade the wages and working conditions of domestic farmworkers. We must not create a flood of foreign workers to compete with domestic workers, thereby depressing working conditions for all farm workers.

LULAC is opposed to any expansion of the existing guest worker program or streamlining of the process through which an agricultural employer is now able to obtain guest workers. It seems that in the context of immigration reform legislation, S. 1200 will give agricultural employers what they need without evidence supporting the existence of such a need.

I am not aware of any study, report, or Commission finding that can be cited in support of either expanding or streamlining the existing program. However, as human beings, we know that agricultural employees need adequate sanitation facilities, potable drinking water, and protections from life-threatening pesticides and herbicides. Yet, S. 1200 does not attempt to meet these basic human needs of farm workers.

LULAC will work for the elimination of these "freebies" to agribusiness interests. Instead, LULAC proposes that a determination as to agribusiness' needs be left to the proposed Commission on Agricultural Worker Programs. Further, that such a determination, supported by evidence, be submitted to the Congress for the appropriate review and action.

Since growers themselves have suggested the link between legalization and worker availability, LULAC proposes what we will call the "what's good for the goose is good for the gander" approach. That is, LULAC recommends that the Commission determine if a need for guest workers exists.

Finally, Mr. Chairman, I will briefly address probably the principal change in your bill—legalization:

S. 1200 provides for a Legalization Commission, but little else in short-term relief for those presently eligible for an adjustment of status even under S. 1200. In brief, LULAC views this Commission as an effort to delay the effective date of a legalization program, to reduce the number of qualifying undocumented persons, and to defer the budgetary impact of Federal reimbursement to States for social welfare expenditures on behalf of legalized aliens.

In essence, after reading S. 1200, I am reminded of your comment to me after LULAC returned from the Democratic Convention in San Francisco. You said that LULAC may have poisoned the well forever. It is a bitter cup indeed you have given us in S. 1200.

Thank you, Mr. Chairman.

Senator **Simpson**. Thank you very much.

Now, Arnoldo Torres, please.

Mr. **Torres**. Thank you very much, Mr. Chairman. I am presenting testimony today on behalf of the Arizona Farmworkers Union, a union started in 1977, with 10,000 members presently. I bring greetings from the executive director, Mr. Lupe Sanchez; also, and the National Hispanic Leadership Conference, an organization which is newly founded by former LULAC National President, Tony Bonilla, who wanted me to bring his greetings and his appreciation for allowing me to testify on the organization's behalf.

We are not new to this issue, and before I begin with the substantive comments on the provisions of S. 1200, I would like to simply underscore for the record that many editorial writers and certain syndicated columnists have made quite a bit of money at the expense of the Hispanic groups over the last years by writing about us being out of touch with our community and not following opinion polls.

I do not think we are doing anything different than President Reagan does when he does not follow the polls of the American public with regards to his policy in Central America. And to quote famous American, Alan Simpson in the morning indicated that if he paid attention to every poll that was done on this issue, he would not do anything.

We find our selves in the same position. I think we are pretty much cut from the same cloth on this matter. We basically are attempting to do what we believe to be the right thing, and if we did pay attention to polls of that nature, we would probably be sitting on our thumbs for the rest of our lives.

So I would hope that in the future, if it comes to the point where we have to oppose the legislation even after we have gone through the process of subcommittee, full committee markup, Senate action, and House action, that we will not be alleged to be opposed to immigration reform and labeled obstructionists. We are simply trying to do what we believe is the right thing and we should not be compared any differently or alluded to any differently than President Reagan or Senator Simpson in that regard.

Your legislation we regard as simply a starting point. We do not believe that this will be the final form that it will take when it goes to the Senate floor for final action. We certainly would like to believe that it is not going to be in its present form by that time.

There is no point in debating employer sanctions. We have gone down this same road 4 years and unfortunately we are not going to convince you and you are not going to be able to convince us. I think that is simply an issue that we have reached an impasse on. We do not agree on the subject. I simply hope that we will not have the same impasse on temporary guestworkers and legalization. I certainly hope that we will be able to do something to improve those two sections learning from the past.

However, I raise some very serious concerns with regards to enforcement of immigration law. I, when at LULAC as executive director, always supported increases in the enforcement of immigration law by the INS. FAIR used to say that we were not honest in our support of that.

The reason for our somewhat lackluster support was the fact that never had there been a serious discussion about the rights of people. The impression has been by FAIR and many other groups that if you protect people's rights under the fourth amendment, you cannot aggressively enforce the immigration law of this country. That is a contradiction of the American legal system and the spirit of the American judicial system. These elements are not mutually exclusive.

We believe that you can increase the enforcement of the immigration laws, but you must also increase the protection of people's rights. If you do not do that, you are going to be tarnishing your effort, you are going to be tarnishing the impression that you have always wanted to give of being fair and aboveboard and equitable in any kind of reform of U.S. immigration policy that you may undertake.

We cannot, in all good conscience, support any increases in enforcement unless there is a real serious effort by this subcommittee and this Congress to protect people's rights, and we do again emphasize that enforcement and protection are not mutually exclusive. You can protect people's rights without running into the difficulties of not enforcing the law aggressively. I am very concerned about that and I think that every group has been concerned about that over a long period of time.

I indicated to you earlier that I wanted to give you an example of what happened when I was crossing the great State of Wyoming. I believe you are familiar with that State, the southern part of that State. I was driving along one of your nice highways—it is a beautiful State, Senator, I want to compliment you on that, even though you are from the northern part—and; unfortunately, I saw one of your State troopers pull aside a car with four Mexicans in it. I was wondering if they had done anything wrong and I went back and asked the State trooper and he said, "No, but he believed that these people were undocumented workers."

Now, if I had been maybe a little darker, if I had had longer hair and if my dad was in the same situation, I am afraid that they may have stopped us in a Ryder rental truck, but I think this underscores the fear that we have that people's rights are being violated simply because of physical and linguistic characteristics.

I think also that in addition to supporting the need for increased enforcement but also the need to protect people's rights, we must deal with the issue of border enforcement, getting beyond the point of being effective. I believe that we may get to that point very soon if we begin to and continue to saturate the idea of border enforcement.

Very briefly, since the red light is on, the temporary worker program is clearly the most ludicrous, the most insulting, the most contradictory, the most hypocritical element of immigration debate. I know that you personally have had difficulties having to deal with this issue and having to include a provision of this nature in your bill.

We believe that there should be absolutely no section with H-2 workers in your legislation this year. I think if you were to do that, it would be a lot easier for us to be extremely more laudatory of your efforts.

With regards to legalization, I want to raise some serious concerns that Mr. Bonilla asked me to raise specifically.

We read a draft memo from Alan Nelson, the Commissioner of the INS; to Mr. Edwin Meese; U.S. Attorney General. It was a draft memo, but he states and writes in his memo on page 2:

> "Finally, he (Senator Simpson) proposed to delay the legalization of any illegal aliens for approximately 3 years until the Presidential commission determines that effective enforcement measures are in place."

The memo further states on page 11 that:

> "As previously mentioned, the administration's preference is to avoid any Presidential commissions. Senator Simpson feels this commission is essential in his effort to delay the effective date of a legalization program, reduce the number of qualified and illegal aliens, and defer the budgetary impact of Federal reimbursement of States for social welfare expenditures on behalf of legalized aliens."

Senator, these are passages that are contained in the draft memo and they could be totally incorrect. It is possible that Commissioner Nelson misinterpreted your intentions. It could be possible that this memo was only kept in draft form. It could be possible that release of this memo was meant to make us look bad. We would like to believe that one of these, at the minimum, is true and that all of them are partially correct. Should this memo be legitimate and correct in its interpretation of your bill's intentions, it would cause us even greater concern than the bill in its present form.

We have always regarded you as a strong advocate of legalization and these comments by Mr. Nelson in his memo to Mr. Meese do raise concerns and we would like to believe that Mr. Nelson is simply erroneous in his interpretation of your intentions.

We will not belabor the issue. We have problems with the trigger of your commission on legalization. We do not agree with the Presidentially appointed commission, for it has the same structural and procedural shortcomings of the Carter commission. I would conclude by telling you the following. We have been down this road 4 years with you, Senator, and we hope that it has not been in vain.

Your quest to reform immigration law, our concerns about protecting people's rights in our community have not been accomplished. We have been failures in that regard, both of us.

I would hope that we would use and learn from our experiences together of the past; to really try and improve those sections of the bill where there is room for improvement. We cannot agree on sanctions. We seriously believe that we will never be able to agree on that, but we do hope that the other two major sections of your bill will not have the same approach and the same attitude that sanctions have at the present time.

Again, I very much appreciate the opportunity that you have given us to present our testimony.

[The prepared statement of Mr. Torres follows:]

PREPARED STATEMENT OF ARNOLDO S. TORRES

GOOD AFTERNOON MR. CHAIRMAN AND MEMBERS OF THE SENATE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY. I AM ARNOLDO S. TORRES AND I AM PRESENTING TESTIMONY ON BEHALF OF THE ARIZONA FARMWORKERS UNION AND THE NATIONAL HISPANIC LEADERSHIP CONFERENCE. MR. TONY BONILLA, PRESIDENT OF THE NEWLY FOUNDED CONFERENCE HAS SPECIFICALLY REQUESTED ME TO EXPRESS HIS APPRECIATION FOR ALLOWING HIS ORGANIZATION TO PRESENT IT'S VIEWS ON S. 1200, IMMIGRATION REFORM LEGISLATION AUTHORED BY YOU, MR. CHAIRMAN. NEITHER MYSELF NOR MR. BONILLA ARE NEW TO THIS ISSUE HAVING BEEN INTRICATELY INVOLVED IN THIS DEBATE FOR THE LAST FIVE YEARS. BEFORE I BEGIN THE SUBSTANTIVE PRESENTATION OF THIS TESTIMONY I WOULD LIKE TO EMPHASIZE THAT WE VIEW THIS HEARING AS THE FIRST STEP IN THIS YEARS DEBATE OVER THE TYPE OF IMMIGRATION REFORM THIS COUNTRY SHOULD UNDERTAKE. CONTRARY TO THE PREVIOUS YEARS OF ALLEGATIONS THAT HISPANICS ARE OUT OF STEP WITH OUR CONSTITUENCY BY OPPOSING IMMIGRATION REFORM WE WANT TO MAKE IT PERFECTLY CLEAR THAT WE DO NOT QUESTION THE NEED FOR REFORMING U.S. IMMIGRATION POLICY BUT HAVE BEEN AND WILL CONTINUE TO BE PRIMARILY CONCERNED WITH THE APPROACH AND POLICIES ENACTED TO MANIFEST THIS REFORM.

EMPLOYER SANCTIONS AND ENFORCEMENT

ONCE AGAIN, THE PREMISE OF THIS LEGISLATION IS EMPLOYER SANCTIONS AND ONCE AGAIN, IT IS IMPOSSIBLE TO SUPPORT THE CONCEPT OF SANCTIONS WHICH IS CONTAINED IN THIS LEGISLATION. IT IS NOT OUR DESIRE TO REVIEW THE PREVIOUS ARGUMENTS OF THE LAST FIVE YEARS RAISED AGAINST THE USE OF EMPLOYEP SANCTIONS, FOR CLEARLY, YOU ARE NOT CONVINCED OF THE FEARS ARGUED OF EMPLOYMENT DISCRIMINATION AND HAVE BEEN SUCCESSFUL IN HAVING THE U.S. SENATE ACCEPT EMPLOYER SANCTIONS FOR THE LAST FOUR YEARS. WE ARE WELL AWARE OF YOUR ARGUMENTS FOR THE NEED FOR EMPLOYER SANCTIONS AND WOULD HAVE HOPED THAT OVER THE YEARS, OUR DIVERGENT VIEWS COULD HAVE FOUND A REASONABLE MIDDLE GROUND OR ALTERNATIVE TO YOUR CONCEPT OF EMPLOYER SANCTIONS. SADLY, AND VERY UNFORTUNATELY, WE FIND OURSELVES AGAIN OPPOSING EACH OTHER ON THIS ISSUE. THIS PLAY, WHICH HAS RUN ON THE NATIONAL LEVEL FOR FOUR YEARS IS ABOUT TO DO ITS FOURTH REPEAT PERFORMANCE. WE CHOOSE TO BE HOPEFUL THAT PERHAPS THERE MAY BE SOME APPROACH THAT WE CAN AGREE ON THAT, WHILE NOT SATISFYING EITHER OF US COMPLETELY, WILL BE MUCH BETTER THAN THE SANCTIONS YOUR BILL CONTAINS.

THE REASON FOR THIS OPTIMISM IS YOUR CALL FOR SUPPLEMENTAL AUTHORIZATION FOR WAGE AND HOUR ENFORCEMENT WHICH WE HAVE ALWAYS BELIEVED AND ADVOCATED SHOULD BE THE FIRST EFFORT TO ADDRESS THE HIRING OF UNDOCUMENTED WORKERS. THE ISSUE SHOULD BE THE REMOVAL OF ECONOMIC INCENTIVES FOR EMPLOYERS TO HIRE UNDOCUMENTED, NOT THE INHERENTLY DISCRIMINATING CONCEPT OF ATTEMPTING TO DISTINGUISH BETWEEN U.S. CITIZENS, LEGAL RESIDENTS, AND UNDOCUMENTED WORKERS. THE DISTINCTION CANNOT BE DONE WITHOUT DISCRIMINATING AGAINST U.S. CITIZENS AND LEGAL RESIDENTS WHO MAYA APPEAR TO BE "FOREIGN" DUE TO LINGUISTIC AND PHYSICAL CHARACTERISTICS. WE WOULD HOPE THAT YOU WILL SERIOUSLY CONSIDER EXPANDING THIS CONCEPT BEYOND IT'S PRESENT FORM.

WITH REGARDS TO ENFORCEMENT OF IMMIGRATION LAW, WE HAVE ALWAYS SUPPORTED THIS EFFORT AND DO SO AGAIN, HOWEVER, WE MUST EMPHATICALLY UNDERSCORE THAT THIS SUPPORT HAS ALWAYS BEEN PRESENT ON THE CONDITION THAT INDIVIDUAL RIGHTS NOT BE TRAMPLED OR GIVEN SECONDARY IMPORTANCE IN THE QUEST FOR AGGRESSIVE ENFORCEMENT OF U.S. IMMIGRATION LAW. OVER THE LAST THREE YEARS, THE IMMIGRATION AND NATURALIZATION SERVICE (INS) HAS RECEIVED CONSIDERABLE ATTENTION IN ITS NEED FOR ADDITIONAL RESOURCES. WE HAVE JOINED THIS EFFORT BUT HAVE BEEN IGNORED WHEN IT COMES TO ENSURING THAT WHILE THE LAW BE AGGRESSIVELY ENFORCED, INDIVIDUAL AND GROUP RIGHTS NOT BE VIOLATED OR PUT ON HOLD. WE DO NOT PROFESS TO HAVE THERE BE COMPETITION BETWEEN ENFORCEMENT AND RIGHTS, BUT THERE HAS BEEN A TREMENDOUS AND DANGEROUS IMBALANCE BETWEEN THESE TWO ELEMENTS. ONCE AGAIN, YOUR BILL CALLS FOR SANCTIONS AND FOR MORE RESOURCES FOR THE INS TO ENFORCE THE LAW, HOWEVER, IT APPEARS THAT THE HISPANIC CITIZEN IS ONCE AGAIN LEFT TO DEAL WITH THE INDIGNITY OF HAVING OUR RIGHTS VIOLATED OR GIVEN SECONDARY IMPORTANCE. WE DO NOT BELIEVE THAT THESE TWO ELEMENTS ARE MUTUALLY EXCLUSIVE; WE BELIEVE AND INSIST THAT THEY ARE NOT AND THAT YOU SHOULD DO ALL THAT YOU CAN TO ENSURE THAT WITH THE PRESENT BUILDUP IN INS ENFORCEMENT, THAT CONSTITUTIONAL AND CIVIL RIGHTS ARE NOT WATERED DOWN. THIS IN THE LONG RUN, WILL ONLY FURTHER TARNISH YOUR EFFORTS TO ENACT "FAIR, EQUITABLE IMMIGRATION REFORM." WE ASK YOU NOT TO RESPOND AFFIRMATIVELY TO THE RACE BAITERS, THE MERCHANTS OF IMMIGRANT FEAR, WHO ALLEGE THAT IMPROVED AND INCREASED ENFORCEMENT CANNOT BE DONE IF FOURTH AMENDMENT RIGHTS ARE PROPERLY, ADEQUATELY, AND JUSTLY PROTECTED. WE FIERCELY BELIEVE THAT AMERICAN SOCIETY WILL LOSE MUCH MORE THAN GAIN FROM ANY "SO-CALLED" IMMIGRATION REFORM IF THIS IS ALLOWED TO HAPPEN. FOURTH AMENDMENT RIGHTS MUST BE GUARANTEED AND CAN, WITHOUT HINDERING THE ENFORCEMENT OF IMMIGRATION LAW. WE WOULD BE MORE THAN PLEASED TO DISCUSS IN VERY SPECIFIC DETAIL OUR SUGGESTIONS FOR ENSURING THAT FOUR AMENDMENT RIGHTS ARE NOT VIOLATED AND THAT THIS INCREASED ENFORCEMENT BY THE BORDER PATROL NOT BE BASED ON PHYSICAL AND LINGUISTIC CHARACTERISTICS.

OVER THE LAST TWO YEARS AND MORE RECENTLY, IN THE LAST EIGHT MONTHS, WE HAVE SEEN THE LOSS OF LIFE OF UNDOCUMENTED ALIENS BECAUSE OF OVERZEALOUS ENFORCEMENT BY THE INS. THIS SITUATION HAS BEEN AND THREATENS TO CREATE A VOLATILE CONFRONTATION

BETWEEN ELEMENTS IN THE HISPANIC COMMUNITY AND THE INS. THIS IS TRULY IN NO ONE'S BEST INTEREST AND I KNOW YOU WOULD NOT WANT TO BE CONSIDERED AS HAVING ANYTHING TO DO WITH SUCH A TRAGIC CONDITION. AGAIN, INCREASED ENFORCEMENT CAN BE DONE WITHOUT SUCH A CONFRONTATION IF YOU ENSURE FOURTH AMENDMENT PROTECTIONS AND FOCUS THIS INCREASE ON FOR-PROFIT SMUGGLERS. THESE ARE THE MAJOR CULPRITS; THIS IS THE MAJOR SOURCE OF ILLEGAL FLOWS WHICH SHOULD BE TARGETED AND PUT OUR OF BUSINESS.

LASTLY, WE ARE EXTREMELY CONCERNED THAT THIS BORDER ENFORCEMENT INCREASE IS GOING BEYOND THE POINT OF EFFECTIVE AND SOUND ENFORCEMENT POLICY. SOME HAVE DESCRIBED THIS SITUATION AS HAVING THE EFFECT OF MILITARIZING THE BORDER IN CERTAIN AREAS. AGAIN, THIS VIEW, WHETHER ACCURATE OR NOT, IS GROWING IN CERTAIN HISPANIC BORDER COMMUNITIES AND HAS EXACERBATED THE TENSIONS BETWEEN THE INS AND HISPANICS. THIS WILL CONTINUE UNLESS CORRECTED IMMEDIATELY.

WE WOULD LIKE TO ADD THAT WHILE SOME WOULD CONSIDER A MINOR CONCESSION IN THIS BILL CONCERNING DISCRIMINATION BASED ON ALIENAGE, YOUR PROVISIONS CALLING FOR EXTENSIVE REPORTS OF POSSIBLE EMPLOYMENT DISCRIMINATION WOULD BE AFTER THE FACT. THERE IS NO PRESENT STRUCTURE OR LAW TO DEAL WITH DISCRIMINATION BASED ON ALIENAGE AND WE RAISE OUR GREATE FEAR THAT SANCTIONS WILL RESULT IN ALIENAGE DISCRIMINATION AGAINST U.S. CITIZENS AND LEGAL RESIDENTS OF HISPANIC DESCENT. THIS IS TOTALLY UNACCEPTABLE. WE HAVE CONTINUALLY UNDERSCORED THE SHORTCOMINGS WITH THE PROVISIONS PREVIOUSLY DRAFTED TO ADDRESS THIS TYPE OF DISCRIMINATION. THIS BILL UNFORTUNATELY REPEATS THIS ERROR.

TEMPORARY AGRICULTURAL WORKER PROGRAMS

WE HAVE ATTACHED ANALYSES OF THE TEMPORARY WORKER PROVISIONS BY THE FARMWORKER JUSTICE FUND, INC. OF LAST YEARS BILL. S. 1200 CONTAINS VIRTUALLY THE SAME PROVISIONS THIS ANALYSIS DISCUSSES AND THUS RESULTS IN OUR OUTRIGHT OPPOSITION TO THESE SECTIONS OF YOUR BILL. THE IDEA THAT AMERICA'S FARMWORKERS ARE BEING PROTECTED OR HELPED BY THESE PROVISIONS IS A LUDICROUS CLAIM. IT INSULTS THE INTELLIGENCE AND CONDITIONS CONFRONTING THE FARMWORKERS OF THIS COUNTRY. THE H-2 SECTIONS OF THIS AND ALL PREVIOUS LEGISLATION ARE PERHAPS THE MOST CONTRADICTORY AND HYPOCRITICAL ELEMENT OF THE IMMIGRATION DEBATE. WHAT WE ARE HONESTLY DEALING WITH IS JUSTIFYING THE FEEDING OF THE INSATIABLE APPETITE OF MANY GROWERS FOR CHEAP, EXPLOITABLE LABOR.

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F.J.F. FACT SHEET ON THE PANETTA GUESTWORKER PROGRAM

Among the amendments to H.R. 1510 is a proposal to create an entirely new guestworker program for the perishable crop industry. This program is not needed, offers little or no protections to U.S. workers, and will lead inevitably to a vast expansion of the number of foreign workers in the United States.

Creation of this new program has been justified on the grounds that the current H-2 program is too inflexible to meet the needs of this industry. Yet the history of the existing H-2 program is to the contrary: Since its inception in 1952, it has been used successfully by perishable crop producers in numerous states including Florida, Texas, Colorado, Virginia and Maryland. The crops involve highly perishable items such as tomatoes, lettuce, onions, melons, peppers, peaches and cantaloupes.

Regarding so-called protections extended by the Panetta program, or the claim that this program will not lead to a massive guestworker program, the facts are that the proposal is weaker than current law's protections and that there are virtually no limits on its expansion.

1. Contrary to Mr. Panetta's assertions, the amendment does not give any hiring preference to U.S. workers.

The amendment only requires growers to recruit domestic workers in the immediate area of employment. Thus, migrant farmworkers who live in base states like Florida and Texas (and who make up the majority of U.S. farmworkers), need not even be recruited prior to the admission of Panetta guestworkers. Moreover, once the Panetta guestworkers have entered the U.S. , there is no requirement that farmers hire U.S. workers. A farmer is free to hire whoever he wants and, in fact, is not precluded from giving a preference to Panetta guestworkers.

2. 'Limiting' the Panetta Program to "perishable crops" is no limitation at all.

This provision offers no protections to U.S. workers. The fact is that most farmworkers are now employed in perishable crops and will be competing directly with these guestworkers for available jobs.

3. The Panetta Program only provides for payment of the prevailing wage rates.

The "adverse effect wage rate" requiring pay higher then the local prevailing rate is a feature of the current H-2 program. The Panetta amendment deliberately avoids incorporating the H-2 AEWR regulations. Thus, it is doubtful that such rates could be imposed.

4. Farmworkers' working conditions will be depressed by the Panetta proposal.

Simple supply and demand dictates that when the supply of workers in a region is augmented with new guestworkers, it will automatically tend to depress the prevailing wages in an area. Since the Panetta amendment does not require that this "adverse effect" be compensated for by setting a special higher wage (as does H-2), a guarantee that guestworkers will be paid the prevailing rate is tantamount to permitting a steady depression of that rate.

5. The Panetta Program eliminates housing protections for guestworkers.

The current H-2 program guarantees that guestworkers will be provided with housing accomodations; the Panetta program would allow substitution of a housing allowance, releiving the employer of an obligation to insure that such housing meets minimum standards.

6. The Panetta Program, in contrast to H-2, does not require that workers be provided with a written contract of the terms and conditions of their employment.

In conclusion, far from constituting a "safety valve" temporary labor program, the Panetta amendment is a new Bracero program meant to bring hundreds of thousands of vulnerable workers to the U.S. under substandard conditions.

For more information, contact F.J.F. Director Mark S. Schacht.

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COMPARISON OF THE LABOR PROTECTIONS UNDER THE BRACERO PROGRAM AND THE PANETTA GUESTWORKER PROPOSAL

Note: Even the infamous Bracero program provided substantial protections for workers (on paper). These protections were included in the authorizing legislation, Public Law 82-78 ("P.L. 78"), the US-Mexico Migrant Labor Agreement of 1951 ("MLA") or in the Standard Work Contract ("SWC").

Protections	Bracero	Panetta	Comment
Domestic Recruitment			
1. Is domestic recruitment a prerequisite to approval of an application for foreign workers?	YES (§ 503(3), PL-78)	NO	Under the Panetta proprosal the grower is not required to attempt to recruit U.S. workers until after his application for foreign workers is approved.
2. Must the Department of Labor certify that there is a shortage of U.S. workers?	YES (§ 503(1), PL-78)	NO	There is no provision for certification by DOL or any other government agency as to availability of US workers.
3. Must DOL be asked to certify that there will be no adverse effect on US working conditions?	YES (§ 503(2), PL-78)	NO	The Panetta program provides generally that employers offer wages and working conditions that will not adversely affect US working conditions. But no specific requirements are set out and no certification requirement is mandated.
4. Are US workers guaranteed terms at least comparable to those provided to foreign workers?	YES (§ 503(3), PL-78)	NO	There is no provision ensuring that growers will not offer better terms to favored foreign workers.
5. Must available US workers be hired after the season has begun?	YES (Art. 9, MLA)	NO	US workers must be recruited only until the foreign workers arrive.
6. Is there a prohibition against the use of foreign workers as strike breakers?	YES (Art. 22, MLA)	YES	
7. Is there a prohibition against the use of foreign workers by growers who also employ undocumented workers?	YES (§ 505, PL-78)	NO	
Foreign Recruitment			
8. Is foreign recruitment governed by an intergovernmental agreement?	YES (§ 501, PL-78)	NO	

Protections	Bracero	Panetta	Comment
9. Are foreign workers guaranteed subsistence expenses while traveling to the worksite?	YES (§ 501(4), PL-78)	NO	
10. Are foreign workers free to accept employment with any grower who has obtained approval to use foreign labor?	YES (§ 501(5), PL-78)	YES	Under the Bracero program, the workers signed contracts with the employer of their choice at the border. Thereafter they were obligated to work for that employer. Under the Panetta proposal the workers would enter without any employment contract or commitment.
Employment Standards			
11. Are the foreign workers guaranteed a written contract?	YES (SWC)	NO	As noted, the Standard Work Contract (incorporated by reference into the US-Mexico Agreement) was required of all employers.
12. Are the foreign workers guaranteed employment for a minimum period?	YES (Art.16, MLA)	NO	
13. Is the grower's compliance with the employment contract guaranteed by the US government?	YES (Art. 32, MLA)	NO	
14. Is DOL authorized to set a special minimum wage, above the prevailing rate, if necessary to avoid adverse wage effects?	YES (Art. 15, MLA)	NO PROVISION	
15. Are the foreign workers guaranteed employer-provided housing?	YES (Art. 2, SWC)	NO	Under the Panetta proposal the grower may give the workers a daily housing allowance, with which they would have to try to locate their own housing.
16. Are foreign workers guaranteed occupational injury insurance?	YES (Art. 3, SWC)	YES	
17. Are foreign workers guaranteed that tools and equipment will be provided without charge?	YES (Art. 5, SWC)	NO	
18. Are foreign workers guaranteed that meals will be provided at cost?	YES (Art. 6, SWC)	NO	
19. Does the program include specified enforcement procedures to prosecute violations?	YES (Art. 30, MLA)	NO PROVISION	The Panetta amendment would make the alien workers ineligible for federal legal services.

Protections	**Bracero**	**Panetta**	**Comment**
20. Are employers required to pay the costs associated with obtaining the documents necessary for the aliens' admission?	YES (Art. 20, SWC)	NO	
21. Is there express recognition of the aliens' right to organize and bargain?	YES (Art. 21, MLA)	NO	
22. Does the government representing the foreign workers have a right to refuse to let workers labor in regions where there may be discrimination against foreign nationals?	YES (Art. 8, MLA)	NO	

CONCLUSION

The Panetta amendment differs from the old Bracero program chiefly in the legal protections it does not offer to the workers involved. The sponsors would have us believe that these protections are unnecessary. But, many of the same farm enterprises which were involved in scandalous exploitation of workers under the Bracero program will be eligible to participate in the Panetta program. Absent these legal protections, the workers will have to rely on the good will and honest business practices of their employers.

Evidence presented to Congress last year to support passage of the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), shows that such reliance will be misplaced when it comes to many farm employers. The Farmworker Justice Fund, Texas Rural Legal Aid and the Migrant Legal Action Program presented more than 100 recent examples of serious labor violations by growers, associations and large agribusiness operations. The Committee on Education and Labor, which reported the AWPA, concluded that:

> Evidence received by the Committee confirms that many migrant and seasonal agricultural workers remain today, as in the past, the most abused of all workers in the United States. [H.Rep. No. 97-885, at 2.]

In such circumstances, adoption of the Panetta program would be irresponsible and unconscionable.

IT IS EXTREMELY DIFFICULT TO BELIEVE THE CLAIMS AND FEARS OF GROWERS THAT THERE WILL BE LABOR SHORTAGES IN THE AGRICULTURAL FIELDS OF THIS COUNTRY SHOULD LEGALIZATION AND EMPLOYER SANCTIONS BE APPROVED. IN THE LAST THREE YEARS, WE HAVE SEEN EXTREMELY ADVERSE EFFECTS ON THE FARMWORKER DUE TO LIMITED EMPLOYMENT IN CALIFORNIA CAUSED BY IMPORTED EUROPEAN WINES AND UNPRECEDENTED BAD WEATHER IN THE RIO GRANDE VALLEY OF TEXAS. THESE SITUATIONS HAVE CREATED GREAT UNEMPLOYMENT AMONG FARMWORKERS AND UNFORTUNATELY, VERY FEW IF ANY HAVE TRANSITIONED TO OTHER EMPLOYMENT AS A RESULT OF THESE CIRCUMSTANCES.

THIS UNEMPLOYMENT HAS REFLECTED THE HIGH NUMBER OF FARMWORKERS IN THE U.S. SEEKING EMPLOYMENT. THE NATIONAL MEDIA CHRONICLED THE SOCIOECONOMIC CONDITIONS CONFRONTING THE FARMWORKER DURING THESE CRISES AND THE GOVERNOR OF TEXAS WENT AS FAR AS TO DECLARE A STATE OF EMERGENCY IN THE RIO GRANDE VALLEY AS A RESULT OF THE EFFECTS OF BAD WEATHER OVER TWO YEARS. HOW CAN WE JUSTIFY THE LEGAL IMPORTATION OF FOREIGN WORKERS WHEN OUR OWN FARMWORKERS ARE STRUGGLING? HOW CAN THOSE WHO CLAIM THAT THE UNDOCUMENTED TAKE JOBS FROM U.S. CITIZENS AND THAT EMPLOYER SANCTIONS MUST BE ENACTED TO HALT THIS CONDITION, ADVOCATE THE PASSAGE OF THREE TEMPORARY AGRICULTURAL WORKER PROGRAMS?

WE BELIEVE THIS HAS HAPPENED, FOR HISTORICALLY NO INSTITUTION IN AMERICAN SOCIETY HAS EVER CONCERNED ITSELF WITH THE PLIGHT OF FARMWORKERS. WE EXPRESS OUR THANKS, WE EXPRESS THE VIRTUES AND LAUD FARMERS AND GROWERS FOR THEIR ROLE IN THE DEVELOPMENT OF THE AMERICAN ECONOMY. SADLY AND UNJUSTLY, WE HAVE ALWAYS IGNORED THE ROLE OF FARMWORKERS IN MAKING THE AMERICAN AGRICULTURAL INDUSTRY THE STRONGEST IN THE WORLD. WE DON'T SEEM TO WANT TO STOP AT ONLY IGNORING THEIR CONTRIBUTIONS; WE ADD INSULT TO INJURY; WE ADD SALT TO THE WOUND BY PROPOSING TEMPORARY AGRICULTURAL PROGRAMS WHICH CAN ONLY INCREASE THEIR UNEMPLOYMENT

WE BELIEVE THAT MANY GROWERS PREFER A DOCILE AND CAPTIVE WORKFORCE OF FARMWORKERS. IN MANY STATES WE SEE EFFORTS TO PROVIDE MINIMUM PROTECTIONS AND SAFETY STANDARDS FOR FARMWORKERS. THESE EFFORTS FOR IMPROVEMENTS POSE PROBLEMS TO SOME GROWERS WHO HAVE NEVER HAD TO REALLY PROVIDE ANY REAL WORKER PROTECTIONS TO FARMWORKERS. THEY HAVE COME TO REGARD THE FARMWORKER AS AN "INALIENABLE RIGHT" WHICH DOES NOT REQUIRE ANY IMPROVEMENTS BECAUSE "THEY DON'T KNOW ANY BETTER" AND ARE USED TO WORKER IN THEIR PRESENT CONDITIONS. THE LIFESTYLE AND SOCIOECONOMIC CONDITIONS OF MOST FARMWORKERS HAVE NOT IMPROVED SINCE EDWARD R. MURROW'S "HARVEST OF SHAME." THE PROVISIONS CONTAINED IN THIS BILL APPEAR TO BE SAYING, WHO CARES WHAT HAPPENS TO FARMWORKERS.

WE BELIEVE THAT IF THEY WERE TO BE ANY TYPE OF LABOR SHORTAGE IN THE AGRICULTURAL INDUSTRY, THAT IT COULD NOT BE ASSESSED NOR WOULD IT MANIFEST ITSELF

FOR MANY YEARS TO COME. GROWERS CONTEND THAT LEGALIZATION WILL RESULT IN A MASS EXODUS OF FARMWORKERS LEAVING AGRICULTURAL EMPLOYMENT. THIS IS LUDICROUS, FOR THE THREE YEARS OF HIGH UNEMPLOYMENT OF FARMWORKERS HAS NOT LED TO ANY MAJOR MOVEMENT TO OTHER EMPLOYMENT. THE MECHANIZATION OF THE AGRICULTURAL INDUSTRY HAS NOT RESULTED IN LARGE SCALED EMPLOYMENT RETRAINING PROGRAMS OF FARMWORKERS UNEMPLOYED BECAUSE OF THIS. THERE HAS NOT BEEN ANY CONCERTED EFFORT BY LOCAL, STATE OR FEDERAL GOVERNMENT TO SERIOUSLY ADDRESS THE UNEMPLOYMENT PROBLEMS OF FARMWORKERS. THIS SITUATION HAS SIMPLY RESULTED IN THE RISING AND ENTRENCHING UNEMPLOYMENT. IF THIS SITUATION HAS NOT RESULTED IN ANY MAJOR EMPLOYMENT TRANSITION BY FARMWORKERS, HOW WILL LEGALIZATION RESULT IN A MASS EXODUS OF FARMWORKERS FROM THE AGRICULTURAL INDUSTRY?

SHOULD A LABOR SHORTAGE EXIST IN THE FUTURE, WE BELIEVE A COMMISSION SHOULD BE ESTABLISHED TO ASSESS THE SITUATION AND RECOMMEND TO CONGRESS HOW IT SHOULD BE RESPONDED TO. IN THE MEANTIME, IF SOMEONE WANTS TO TRULY ASSIST THE FARMWORKER, DON'T ADVOCATE TEMPORARY AGRICULTURAL PROGRAMS BUT RATHER, URGE THE PASSAGE OF SANITATION STANDARDS FOR FARMWORKERS AND THE DEVELOPMENT OF A LEGISLATIVE PACKAGE WHICH ADDRESSES THE STRUCTURAL PROBLEMS FACED BY FARMWORKERS. IMMIGRATION REFORM SHOULD NOT CONTAIN SUCH PROVISIONS.

LEGALIZATION PROGRAM

MR. BONILLA WANTED ME TO RELAY TO YOU HIS ACKNOWLEDGEMENT AND COMPLIMENTS FOR ALWAYS HAVING BEEN AN ADVOCATE FOR LEGALIZATION. HE BELIEVES THAT YOU HAVE BEEN CLEAR IN YOUR STATEMENTS AND ACTIONS IN SUPPORTING THE CONCEPT OF LEGALIZATION. IT IS FOR THESE REASONS THAT WE ARE EXTREMELY PRETRUBED AND SHOCKED TO READ A DRAFT COPY OF A MEMO FROM MR. ALAN C. NELSON, COMMISSIONER OF THE INS TO MR. EDWIN MEESE III, U.S. ATTORNEY GENERAL CONCERNING IMMIGRATION REFORM LEGISLATION ACTION PLAN. IN THIS MEMO COMMISSIONER NELSON WRITES ON PAGE 2 THAT "FINALLY, HE(SIMPSON) PROPOSED TO DELAY THE LEGALIZATION OF ANY ILLEGAL ALIENS FOR APPROXIMATELY THREE YEARS UNTIL A PRESIDENTIAL COMMISSION DETERMINES THAT EFFECTIVE ENFORCEMENT MEASURES ARE IN PLACE". THE MEMO FURTHER STATES ON PAGE 11 THAT "AS PREVIOUSLY MENTIONED THE ADMINISTRATION'S PREFERENCE IS TO AVOID ANY NEW PRESIDENTIAL COMMISSIONS, SENATOR SIMPSON FEELS THIS COMMISSION IS ESSENTIAL IN HIS EFFORT TO DELAY THE EFFECTIVE DATE OF A LEGALIZATION PROGRAM, REDUCE THE NUMBER OF QUALIFYING ILLEGAL ALIENS, AND DEFER THE BUDGETARY IMPACT OF FEDERAL REIMBURSEMENT TO STATES FOR SOCIAL WELFARE EXPENDITURES ON BEHALF OF LEGALIZED ALIENS".

THESE PASSAGES ARE CONTAINED IN THIS DRAFT MEMO AND COULD BE TOTALLY INCORRECT. IT IS POSSIBLE THAT COMMISSIONER NELSON MISINTERPRETED YOUR INTENTIONS. IT COULD BE

POSSIBLE THAT THIS MEMO WAS ONLY KEPT IN DRAFT FORM. IT COULD BE POSSIBLE THAT RELEASE OF THIS MEMO WAS MEANT TO MAKE US LOOK BAD. WE WOULD LIKE TO BELIEVE THAT ONE OF THESE AT THE MINIMUM IS TRUE AND THAT ALL OF THEM ARE PARTIALLY CORRECT. SHOULD THIS MEMO BE LEGITIMATE AND CORRECT IN IT'S INTERPRETATION OF YOUR BILL'S INTENTIONS, IT WOULD CAUSE US EVEN GREATER CONCERN THAN THE BILL IN IT'S PRESENT FORM.

ALONG THESE LINES OF CONCERN, YOU HAVE ADDED IN S. 1200 A TRIGGER LEGALIZATION PROGRAM WHICH HAS BEEN DESCRIBED BY MANY AS CAUSING YOUR BILL TO BE CONSIDERED MORE REGRESSIVE THAN YEARS PAST. WHILE THE TRIGGER AND CRITERIA ARE TROUBLESOME WE WOULD INDICATE THAT WE ARE IN STRONG SUPPORT FOR THE ESTABLISHMENT OF A PERMANENT COMMISSION ON IMMIGRATION. WE WOULD NOT ENCOURAGE A PRESIDENTIALLY APPOINTED COMMISSION FOR WE WOULD LIKE TO AVOID THIS COMMISSION MAKING THE SAME MISTAKES THE CARTER COMMISSION COMMITTED IN DEALING WITH IMMIGRATION REFORM. THESE MISTAKES PRIMARILY DEAL WITH THE FACT THAT IT CONCERNED ITSELF MUCH MORE WITH POLITICALLY ACCEPTABLE CONCEPTS THAN ASSESSING THE PROBLEMS OF IMMIGRATION AND REFUGEE POLICY AND MAKING RECOMMENDATIONS ON THE MERITS OF THE FACTS PRESENTED. RATHER THE CARTER COMMISSION DID MUCH OF CONGRESSS' WORK BEFORE CONGRESS EVEN RECEIVED THE RECOMMENDATIONS. SUCH A COMMISSION MUST BE FREE OF SUCH POLITICAL MANIPULATION, IT SHOULD BE GUARDED AS MUCH AS POSSIBLE FROM HAVING SUCH INFLUENCE AND DIRECTING IT'S WORK FOR POLITICAL ACCEPTANCE. WE HAVE ALWAYS BELIEVED THAT SUCH A COMMISSION MUST BE COMPREHENSIVE IN IT'S REVIEW OF IMMIGRATION AND REFUGEE ISSUES AND SHOULD ADEQUATE REPRESENTATION OF THE COMMUNITIES WHICH WILL BE MOST IMPACTED BY IT'S ANALYSIS. AT THE SAME TIME, THIS COMMISSION SHOULD REVIEW SPECIFIC ASPECTS OF IMMIGRATION AND REFUGEE POLICY AND SHOULD REPORT BACK TO CONGRESS EVERY TWO YEARS AS TO THE TYPE OF ACTIONS CONGRESS SHOULD UNDERTAKE IN IMPROVING AND ADDRESSING THE EVER INCREASING ISSUES WHICH IMMIGRATION AND REFUGEE MOVEMENTS ARE PRESENTING TO INTERNATIONAL AND U.S. SOCIETY.

THE CRITERIA WHICH YOUR COMMISSION HAS BEEN ENTRUSTED TO ASSESS BEFORE TRIGGERING LEGALIZATION ARE IMPOSSIBLE TO MEASURE OBJECTIVELY AND EFFECTIVELY. IT IS NOT THAT WE WISH TO SIMPLY OBJECT IT IS SIMPLY A FACT THAT ATTEMPTING TO MEASURE SUCH CONDITIONS HAVE PROVEN INEFFECTIVE IN THE PAST AND HIGHLY SUSPECT DUE TO THE TENUOUS STATUS OF THE UNDOCUMENTED. IF YOUR COMMITTMENT IS TO ENACT A EEGALIZATION PORGRAM WHICH WILL LEGALIZA AS MANY PERSONS AS POSSIBLE AND CREATE A BETTER ENVIORNMENT FOR THEM THEN THIS CRITERIA AND TRIGGER MUST BE DELETED. IT'S CONTINUED PRESENCE CAN ONLY LEAD MANY TO INTERPRET COMMISSIONER'S NELSON MEMO AS ACCURATE. WE WOULD WE DISMAYED IF THIS WAS IN FACT THE TRUTH FOR IT WOULD CONTRADICT YOUR CLEAR EXPRESSED PURPOSE AND SUPPORT FOR A FAIR AND EFFECTIVE LEGALIZATION PROGRAM.

HOWEVER, IF YOU ARE INTERESTED IN DELAYING THE LEGALIZATION PROGRAM FOR THE PURPOSE OF INSURING THAT THE INS, VOLAG AGENCIES AND COMMUNITY BASED GROUPS ARE PROPERLY

TRAINED AND READY TO IMPLEMENT LEGALIZATION AND THAT THE UNDOCUMENTED POPULATION HAS BEEN PROVIDED ADEQUATE TIME AND INFORMATION FOR UNDERSTANDING THE TERMS, CONDITIONS AND CRITERIA FOR LEGALIZATION, WE WOULD CONSIDER THIS WORTHWHILE AND IN NEED OF FURTHER DISCUSSION. UNFORTUNATELY, THE MEMO AND THE FORM IN WHICH THESE SPECIFIC PROVISIONS HAVE BEEN DRAFTED LEAD US TO HAVE SERIOUS CONCERNS AND CLEARLY CAN ONLY RESULT FURTHER CONFRONTATION BETWEEN US WHICH HAS LED TO NO LEGISLATION THE LAST THREE YEARS. ALSO, THE FORM OF THIS LEGALIZATION WOULD GO AGAINST WHAT WE HAVE ALWAYS BELIEVED YOUR INTENTIONS TO BE ON THIS MATTER. I HOPE YOU WILL AGREE THAT THIS TYPE OF SITUATION MAKES YOU AND US LOSERS BUT MUCH MORE IMPORTANTLY WILL MAKE THOSE PERSONS ELIGIBLE FOR LEGALIZATION THE REAL VICTIMS.

OVER THE MANY YEARS A MAJOR REASON FOR OPPOSING THE CONCEPT OF LEGALIZATION HAS BEEN THE CONCERN FOR THE COST INVOLVED TO THE FEDERAL, STATE AND LOCAL GOVERNMENT. THIS FEAR WAS HEIGHTENED TWO AND ONE-HALF YEARS AGO WHEN THE OFFICE OF MANAGEMENT AND BUDGET ESTIMATED CARELESSLY AND MALICIOUSLY THAT THE COST OF LEGALIZING THE UNDOCUMENTED WOULD BE APPROXIMATELY $5 BILLION (LOW FIGURE) TO OVER $20 BILLION (HIGH FIGURE). IT APPEARED AT THE TIME THAT OMB WAS CITING THESE FIGURES SO AS TO ENCOURAGE OPPOSITION TO LEGALIZATION. WHAT HAPPEN WAS THAT MANY MEMBERS OF CONGRESS AND THE PROPONENTS OF IMMIGRATION FEAR BEGAN TO BELIEVE AND ADVANCE THE PRECEPTION THAT ALL UNDOCUMENTED WOULD REQUIRE WELFARE AND SOCIAL SERVICES ASSISTANCE, AND THAT THE NUMBER OF UNDOCUMENTED WHICH WOULD BE ELIGIBLE FOR LEGALIZATION WAS FOUR TO SIX MILLION. THIS HAS BEEN THE PREVALENT VIEW HELD BY MANY INVOLVED IN THIS DEBATE AND UNFORTUNATELY HAS GUIDED THEIR DECISIONS ON THIS ISSUE.

I HAVE ATTACHED A COPY OF THE RECENT ESTIMATES OF LEGALIZATION MODELS CONDUCTED BY THE CONGRESSIONAL BUDGET OFFICE AND SUBMITTED TO CONGRESSMAN DON EDWARDS (D-CA.) FEBRUARY 27,1985. THIS REPORT ESTIMATES THE COSTS OF VARIOUS MODELS DISCUSSED AND DEBATED AND APPROVED BY THE HOUSE AND SENATE AND THE CONFERENCE COMMITTEE OF LAST YEAR. THESE ESTIMATES ASSUME A ONE-TIER LEGALIZATION PROCESS AS OPPOSED TO THE TWO-TIER PROGRAM WHICH CONFERENCE ACCEPTED AND IS AGAIN CONTAINED IN S.1200. THE MOST GENEROUS LEGALIZATION MODEL WITH AN ELIGIBILITY CUT-OFF DATE OF JANUARY 1, 1983 AND ELIGIBLE FOR ALL FEDERAL GOVERNMENT ENTITLEMENT PROGRAMS WOULD RESULT IN APPROXIMATELY $1.6 BILLION A YEAR FOR FOUR YEARS. THIS IS SIGNIFICANTLY LESS THAN THE NUMBERS THROWN AROUND LAST YEAR AND EVEN MORE IMPORTANT IS THE FACT THAT NO ONE HAS EVER ADVOCATED ELIGIBILITY FOR ALL FEDERAL GOVERNMENT ENTITLEMENT PROGRAMS. ADDING TO THIS IS THE STUDY CONDUCTED BY THE CENSUS BUREAU AND RELEASED IN APRIL 1983 WHICH ESTIMATED THAT ONLY 2 MILLION UNDOCUMENTED WERE COUNTED IN THE 1980 CENSUS. THESE 2 MILLION HAVE BEEN IN THE COUNTRY AN AVERAGE OF 5 TO 6 YEARS AND WE BELIEVE WOULD MAKE UP THE POPULATION OF UNDOCUMENTED WHO WOULD BE IN A POSITION

TO QUALIFY FOR THE LEGALIZATION PROGRAM. THESE FACTS WHICH WERE KNOWN TO MANY LAST YEAR DURING THE DEBATE ON LEGISLATION SHOULD NOT AND CANNOT BE IGNORED ANY LONGER. FAILURE TO SERIOUSLY CONSIDER THESE FACTS REFLECT A DESIRE TO ENACT POOR LEGISLATION AND WILL HAVE AN EXTREMELY DAMAGING EFFECT ON THE LEGALIZATION PROGRAM AND THE EFFORTS BY MANY INCLUDING YOURSELF AND FATHER TED HESBURG TO IMPROVE THE CONDITION OF THE UNDOCUMENTED AND REMOVE THEM FROM THEIR"SHADOW" EXISTENCE.

CONCLUSION

SENATOR SIMPSON, WE HAVE BEEN DOWN THIS ROAD MANY TIMES FOR MANY YEARS AND WE WOULD LIKE TO BELIEVE THAT THESE EXPERIENCES HAVE NOT BEEN IN VAIN. WE WOULD LIKE TO BELIEVE THAT YOU HAVE LISTENED TO OUR CONCERNS AND WILL BE OPEN TO OUR INTERESTS FOR THEY ARE NOT SOLELY FOCUSED ON A NARROW INTEREST. WE ARE COMMITTED TO ATTEMPTING TO WORK WITH YOU AND YOUR STAFF TO IMPROVE THIS BILL BUT CANNOT AND WILL NOT SUPPORT THE INHERENT DISCRIMINATORY CONCEPT OF EMPLOYER SANCTIONS AS CONTAINED IN YOUR BILL. WE ARE PLEASED TO SEE THAT YOU HAVE ACCEPTED THE IDEA WE HAVE LONG ADVOCATED OF PIECE MEAL LEGISLATION TO REFORM IMMIGRATION AND REFUGEE POLICY BUT UNDERSCORE THE NEED FOR A COMMISSION WHICH WILL BE FREE OF POLITICAL INFLUENCE AND WILL ADDRESS DIFFERENT ASPECTS OF REFORM EVERY TWO YEARS. FURTHERMORE, TEMPORARY AGRICULTURAL WORKER PROGRAMS CANNOT AND MUST NOT BE ENACTED UNTIL WE HAVE PROPERLY ASSESSED THE NEEDS OF AMERICA'S FARMWORKERS AND INSURE THAT UNEMPLOYMENT WILL NOR RESULT FROM ANY PROGRAM SHOULD ONE PROVE NECESSARY.

AGAIN, OUR CONFRONTATIONS OF THE PAST HAVE NOT RESULTED IN IMPROVING THE LOT OF FARMWORKERS, OF CONTROLLING ILLEGAL IMMIGRATION NOR OF TRULY REFORMING U.S. IMMIGRATION AND REFUGEE POLICY. WHILE IT HAS RAISE A GREAT DEAL OF INTEREST IT HAS NOT REALLY BROUGHT A GREAT DEAL OF TRUE UNDERSTANDING OF THE PORBLEMS OF PEOPLE MOVEMENTS. I PERSONALLY HOPE AND BELIEVE THAT WE CAN HAVE GOOD IMPROVEMENTS IN U.S. IMMIGRATION POLICY BUT MUST BE OPEN TO ASPECTS OF CONCERN WHICH HAVE BEEN PREVIOUSLY IGNORED. ALSO, I HOPE YOU UNDERSTAND THAT SHOULD WE BE UNABLE TO REACH REASONABLE ACCORDS WE WILL HAVE NO OTHER CHOICE BUT TO WORK AS DILIGENTLY AS BEFORE AND PERHAPS EVEN MORE TO DEFEAT LEGISLATION WE CONSIDER WORSE THAN THE PRESENT SITUATION. WE EXPRESS OUR THANKS TO YOU FOR THE CONTINUING OPPORTUNITY YOU HAVE PROVIDED US TO PRESENT OUR PRESPECTIVES AND HOPE THAT WE HAVE SAID SOMETHING NEW.

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Rudolph G. Penner
Director

February 27, 1985

Honorable Don Edwards
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman:

The two attachments respond to your letter of November 29, 1984 requesting estimates of the costs associated with the legalization of unauthorized aliens. As you requested, we estimated costs under a number of alternative options for legalization--some 20 in all. Attachment 1, in addition to providing these estimates, discusses their derivation and the assumptions on which they are based.

You requested separate estimates for each of the ten states with the largest unauthorized alien populations. We do not believe that estimates exist of the distribution of unauthorized aliens by state, which would be both reliable and consistent with CBO's aggregate estimates of the numbers of unauthorized aliens in the U.S. Thus we could not complete estimates by state.

Attachment 2 discusses estimates of numbers of unauthorized alien children of school age and education expenditures for them under current law. It also presents estimates of the per capita costs of other services provided by state and local governments under current law.

I hope that you find this information useful in the consideration of an immigration bill.

Please call me if I can be of additional assistance or your staff may wish to contact Janice Peskin (226-2820) in our Budget Analysis Division.

With best wishes.

Sincerely,

Eric Hanushek
For Rudolph G. Penner

Honorable Don Edwards
February 27, 1985
Attachment 1

Congressional Budget Office
Budget Analysis Division [1]

Costs of Legalizing Unauthorized Aliens

For the past three years the Congress has considered legislation that would deal with the problem of illegal immigration. This legislation would, among other things, provide for the legalization of some unauthorized aliens currently residing in the United States. At the same time, the proposed legislation would restrict the access of any newly-legalized aliens to federally-funded government entitlement programs.

This attachment presents and discusses costs of alternatives for legalizing unauthorized aliens. The alternatives include varying the date by which aliens must have entered the United States in order to be eligible for legalization and the government programs for which they would be eligible upon legalization as well as varying the burden of costs among federal, state and local governments. These are the major variables that have differed among the immigration bills considered by Congress during the past three years.

The estimates presented here are very uncertain. Experts on immigration statistics disagree widely about how many unauthorized aliens currently reside in the U.S. The characteristics of these aliens are also in dispute: the dates on which they entered the U.S.; the states in which they live; the jobs in which they work and the wages they are paid; or their sex, age, and marital status. Because of these uncertainties, actual costs of the alternatives costed here could be well above or below CBO's estimates.

The remainder of this attachment is divided into three sections. In the first section, we summarize total costs under the various alternatives, noting how costs vary under each alternative. The second section discusses in detail how one specific alternative affects each entitlement program. The third section discusses other alternatives and how they differ from the alternative discussed in section two.

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[1] For further information, call Janice Peskin (226-2820). Many others at CBO worked on these estimates: Paul Cullinan, Marianne Deignan, Dick Hendrix, Kelly Lukins, Anne Manley, and Jack Rodgers.

Costs of Legalizing Unauthorized Aliens Under Various Alternatives

The alternatives in this analysis are costed using five different dates by which aliens must have entered the U.S. in order to be eligible for legalization (hereafter called the eligibility date). They are January 1 of the following years:

- 1977
- 1980
- 1981
- 1982
- 1983

The analysis also considers four different combinations of federally-funded government entitlement programs for which the legalized aliens would be eligible and ratios of federal and non-federal cost sharing.

- Alternative 1: Eligibility for all government programs, with the federal government paying 100 percent of the costs for four years.
- Alternative 2: Ineligibility for all means-tested federal entitlement programs for four years, except for Supplemental Security Income (SSI), Food Stamps and Medicaid for those on SSI, and Medicaid for children, pregnant women, and emergency cases.
- Alternative 3: Ineligibility for all federal entitlement programs for four years, except for SSI and Food Stamps and Medicaid for those on SSI.
- Alternative 4: Ineligibility for all federal entitlement programs for four years.

Other provisions concerning legalization such as the length of the application process are assumed to be similar to those tentatively agreed to by conferees on the Simpson-Mazzoli bill in the 98th Congress. 2/ Thus the estimates assume that unauthorized aliens could apply for legalization over a 1-year period, following a 6-month period of preparation and education by the Department of Justice. Because CBO assumes for purposes of the

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2. There is no conference report on the Simpson-Mazzoli bill because the conference was suspended and never completed. The legalization provisions were all tentatively agreed to but no bill language is available.

estimates that all options would be enacted by September 30, 1985, applications for legalization could begin on April 1, 1986 and continue through March 31, 1987. 3/

Costs to federal, state, and local governments under the various alternatives are summarized in Table 1 for fiscal years 1986 through 1990. They are shown as a function of the eligibility date. As shown in the table, projected costs would rise with the extension of the eligibility date because more unauthorized aliens would qualify for legalization. For example, combined federal, state and local costs for fiscal year 1990 under Alternative 1 would be $0.4 billion if the eligibility date were 1977 and $2.4 billion if it were 1983.

Total costs and their distribution between federal and state and local governments also would depend on the number of federal entitlement programs for which the legalized aliens would be eligible. Total costs would be largest under Alternative 1, where newly legalized aliens would be eligible for all federal programs, and smallest under Alternative 4, where regardless of when they were eligible for legalization, aliens would be eligible for benefits from no federal programs until 1990. For example, based on an eligibility date of 1983, combined federal and state costs would be $2.4 billion under Alternative 1 and $1.2 billion under Alternative 4 in fiscal year 1990. Moreover, federal government costs would be greatest under Alternative 1, where there would be 100 percent federal funding for four years. State costs would be greatest under Alternative 4, where all costs would be borne by states and localities for four years. For example, using an eligibility date of 1983, estimated federal costs in 1990 would be $1.7 billion, $1.0 billion, $0.5 billion, and $0.2 billion under Alternatives 1 through 4, respectively; estimated state costs would be $0.8 billion, $0.7 billion, $1.0 billion, and $1.0 billion, respectively.

These estimates show only costs for the entitlement programs resulting from legalization. There could be some added costs, such as to the Immigration and Naturalization Service, associated with legalization. Moreover, the Simpson-Mazzoli bill had additional costs that were associated with provisions of the bill other than legalization.

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3. In one important respect, however, these estimates differ from the tentative conference agreements. These estimates assume a "one-tier" legalization process in which aliens would be granted permanent resident status immediately. The conference agreed to a "two-tier" process in which certain aliens would be granted permanent resident status immediately but others would be granted temporary resident status for a time before becoming eligible for permanent resident status. A "two-tier" process would entail somewhat lower costs than a "one-tier" process because some of the "temporary" aliens would fail to receive permanent status.

GOVERNMENTS OF LEGALIZING UNAUTHORIZED ALIENS a/ (By fiscal year, in billions of dollars)

Alternatives for Legalization Under Various Eligibility Dates	1986	1987	1988	1989	1990
Alternative 1: Eligible for all federal government entitlement programs					
Federal Outlays					
1977	*	0.1	0.3	0.3	0.3
1980	*	0.2	0.5	0.7	0.5
1981	*	0.3	0.8	1.1	0.8
1982	*	0.5	1.3	1.7	1.2
1983	*	0.6	1.7	2.3	1.7
State/Local Outlays					
1977	0	0	0	0	0.1
1980	0	0	0	0	0.2
1981	0	0	0	0	0.4
1982	0	0	0	0	0.6
1983	0	0	0	0	0.8
Alternative 2: Ineligible except for SSI and some Medicaid					
Federal Outlays					
1977	*	*	0.1	0.1	0.2
1980	*	0.1	0.2	0.3	0.3
1981	*	0.2	0.3	0.4	0.5
1982	*	0.2	0.5	0.6	0.7
1983	*	0.3	0.7	0.8	1.0
State/Local Outlays					
1977	*	*	0.1	0.1	0.1
1980	*	0.1	0.2	0.2	0.2
1981	*	0.1	0.2	0.3	0.3
1982	*	0.1	0.4	0.5	0.5
1983	*	0.2	0.5	0.7	0.7
Alternative 3: Ineligible except for SSI					
Federal Outlays					
1977	*	*	*	*	0.1
1980	*	*	0.1	0.1	0.1
1981	*	*	0.1	0.1	0.2
1982	*	0.1	0.2	0.2	0.3
1983	*	0.1	0.2	0.3	0.5
State/Local Outlays					
1977	*	*	0.1	0.1	0.2
1980	*	0.1	0.2	0.3	0.3
1981	*	0.1	0.4	0.5	0.5
1982	*	0.2	0.5	0.7	0.7
1983	*	0.3	0.7	1.0	1.0
Alternative 4: Ineligible for all federal entitlement programs					
Federal Outlays					
1977	0	0	0	0	*
1980	0	0	0	0	0.1
1981	0	0	0	0	0.1
1982	0	0	0	0	0.1
1983	0	0	0	0	0.2
State/Local Outlays					
1977	*	*	0.1	0.2	0.2
1980	*	0.1	0.2	0.3	0.3
1981	*	0.2	0.4	0.5	0.5
1982	*	0.2	0.6	0.7	0.7
1983	*	0.3	0.8	1.0	1.0

*Less than $50 million.

a. These costs are shown by program in Appendix Tables 1-20.

Numbers of Legalized Aliens. One important variable affecting legalization costs is the number of unauthorized aliens who would be eligible for legalization. Table 2 summarizes CBO's assumptions regarding the number of unauthorized aliens. The number legalized would rise as the eligibility date for legalization was extended. Assuming a 1977 date of eligibility (so that aliens would have had to enter the U.S. prior to January 1, 1977 and reside here continuously since then), CBO estimates that 0.3 million unauthorized aliens would be legalized but assuming a 1983 date of eligibility 1.9 million would be legalized.

TABLE 2. ESTIMATED NUMBERS OF UNAUTHORIZED ALIENS BY ELIGIBILITY DATE a/

	1977	1980	1981	1982	1983
Total unauthorized aliens in U.S. (in millions)	4.5	4.7	4.8	5.0	5.1
Percent of aliens in U.S. in 1986 who would be eligible for legalization	8	17	26	40	55
Percent who would apply and be accepted	60	60	60	60	60
Numbers who would be legalized (in millions)	0.3	0.6	0.9	1.4	1.9

a. Assumptions used in the CBO estimates.

Little hard evidence exists on how many unauthorized aliens reside in the U.S. It has been generally accepted that there were 3 to 6 million unauthorized aliens in the U.S. in the late 1970's. 4/ The CBO estimate uses 4.5 million aliens in 1977, the midpoint of the range. Even less is known about how the numbers of unauthorized aliens in the U.S. may have changed in recent years, although anecdotal evidence indicates there has been some net inflow. Based on conversations with persons knowledgeable about the unauthorized alien population, we assume a net increase of 150,000 in each year beginning in 1980. By 1983, then, we estimate that there were 5.1 million unauthorized aliens in the U.S.

The percentages of unauthorized aliens estimated to be eligible for legalization are shown in Table 2. Of the 5.6 million unauthorized aliens estimated to be in the U.S. in 1986, when the application process would begin, 8 percent would be eligible with a 1977 eligibility date and 55 percent would be eligible with a 1983 eligibility date. These percentages are based on Immigration and Naturalization Service studies. CBO, however, has increased the percentages somewhat to allow for a potentially larger percentage of aliens to remain in the U.S. rather than return to their own countries; CBO assumes that some unauthorized aliens are aware of the possibility of legalization because of legislative activity in recent years. Among those eligible, we assume--again based on conversations with experts--that approximately 60 percent would apply for and be granted resident status.

Costs of Legalization By Entitlement Program Under Alternative 2

Legalization would increase costs considerably in government entitlement programs. 5/ Unauthorized aliens cannot legally receive benefits from entitlement programs but, when legalized, would be potentially eligible unless the immigration legislation provided otherwise. A

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4. A recent study by Census Bureau analysts has estimated that only 2 million unauthorized aliens were counted in the 1980 Census. While there is some (unknown) undercount of aliens in the Census, their estimates might imply numbers of aliens lower than what CBO assumes in its estimates. See Jeffrey S. Passel and Robert Warren, "Estimates of Illegal Aliens from Mexico Counted in the 1980 United States Census," paper presented at the annual meeting of the Population Association of America, Pittsburgh, Pennsylvania, April 1983.

5. An entitlement program is one that provides benefits to any person who meets the eligibility requirements established in laws and regulations. Legalization may also have cost implications for non-entitlement spending but these effects are not dealt with here.

number of government entitlement programs--federal, state and local--would be affected: Aid to Families with Dependent Children (AFDC), SSI, Food Stamps, Unemployment Compensation, Disability Insurance (DI), Medicaid, Medicare, and state cash and medical general assistance (GA).

Estimates for each of these programs under all four alternatives for each eligibility date--some 20 options in all--are shown in appendix tables. Here we discuss Alternative 2 assuming only one eligibility date--1981, the eligibility date tentatively agreed to by the conferees in the Simpson-Mazzoli bill. 6/ Alternative 2 conforms most closely to the reported, tentative conference agreements. 7/

In Alternative 2, legalized aliens would be ineligible for means-tested entitlement programs for four years with two exceptions: (1) the aged, blind, and disabled who could receive SSI if they were eligible, along with Food Stamps and Medicaid; and (2) children, pregnant women, and persons in need of emergency services who could receive Medicaid if they were eligible. Aliens would be ineligible to receive other federal means-tested entitlements--AFDC, Food Stamps, and Medicaid--through fiscal year 1989. However, they would be eligible to receive federal non-means-tested entitlements: Unemployment compensation, DI, and Medicare. And they would be eligible to receive state GA.

One assumption underlying CBO's estimates for each of the entitlement programs is that the unauthorized aliens would have to show at the

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6. Conferees on the Simpson-Mazzoli bill tentatively agreed that permanent resident status be given to aliens who entered the U.S. before January 1, 1977 and temporary resident status be given to those who entered before January 1, 1981 (temporary residents could then apply for permanent status after two years).

7. Conferees on the Simpson-Mazzoli bill, however, tentatively precluded permanent residents from receiving most federal welfare programs for three years and temporary residents from receiving most federal welfare programs for five years, compared to the proposed four-year ineligibility in Alternative 2.

time of application for residency that they had not been nor would they be likely to be "public charges." 8/ However, based on our understanding of the tentative conference agreement, an alien could be granted resident status if he or she were currently unemployed but could demonstrate a history of employment in the U.S. evidencing self-support without reliance on public cash assistance. Thus, at the time the aliens would become residents, they would presumably be working, except for a relatively small number of unemployed persons. Over time, however, they could be expected to resemble the United States population as to recipiency of entitlement programs. By 1989 and 1990, we assume that recipiency rates would resemble those of the U.S. population for similar age, sex, ethnic origin, and income groupings.

Estimated costs--federal, state and local--for each program are shown in Table 3 for fiscal years 1986 through 1990. Each program is discussed below.

AFDC Program. The AFDC program provides benefits to needy children and their caretaker relatives. Benefit levels are set by states and localities and program costs are financed partially by the federal government and partially by states and localities. Under Alternative 2, aliens could not receive AFDC until 1990, and then only aliens who had applied for resident status in fiscal year 1986 (fewer than one-half) would be eligible. Thus costs would rise significantly more after 1990 as all of the legalized aliens became potentially eligible for AFDC as well as for the other federal means-tested programs. Costs in 1990 would be $20 million to the federal government and $15 million to states and localities. AFDC costs are based on the assumption that 52 percent of the aliens given permanent resident status would be married men and women, reflecting demographic data on unauthorized aliens, which show about 79 percent to be adults and the majority to be young and male, and marital rates in the U.S. Of the married men and women, 4.5 percent of those not of Spanish origin and 17.0 percent of those of Spanish origin are estimated to receive AFDC. These rates of AFDC recipiency are those which currently exist in the program. Use of the higher rate for those of Spanish origin means that rates of divorce, separation, and illegitimate birth--events qualifying a child for AFDC because a parent is absent from the home--are assumed to be

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8. The "public charge" test is part of current law. In Title II, Chapter 2, Section 212 of the Immigration and Nationality Act, one cause for exclusion from admission to the U.S. is given as: "Aliens who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission, are likely at any time to become public charges."

TABLE 3. ALTERNATIVE 2 WITH A 1981 ELIGIBILITY DATE: OUTLAYS OF FEDERAL AND STATE AND LOCAL GOVERNMENTS OF LEGALIZING UNAUTHORIZED ALIENS a/ (By fiscal year, in millions of dollars)

Program	1986	1987	1988	1989	1990
AFDC					
Federal	0	0	0	0	20
State/Local	0	0	0	0	15
Total	0	0	0	0	35
SSI					
Federal	*	20	60	75	70
State/Local	*	5	10	15	10
Total	*	25	70	90	80
Food Stamps					
Federal	*	*	5	5	30
State/Local	0	0	0	0	0
Total	*	*	5	5	30
Unemployment Compensation					
Federal	10	90	140	140	140
State/Local	0	0	0	0	0
Total	10	90	140	140	140
Disability Insurance					
Federal	*	5	20	30	35
State/Local	0	0	0	0	0
Total	*	5	20	30	35
Medicaid					
Federal	*	35	100	145	175
State/Local	*	25	85	120	145
Total	*	60	185	265	320
Medicare					
Federal	0	0	*	*	5
State/Local	0	0	0	0	0
Total	0	0	*	*	5
State GA—Cash					
Federal	0	0	0	0	0
State/Local	*	40	110	155	140
Total	*	40	110	155	140
State GA—Medical					
Federal	0	0	0	0	0
State/Local	*	10	30	40	30
Total	*	10	30	40	30
Total Outlays					
Federal	10	150	325	395	475
State/Local	0	80	235	330	340
Total	10	230	560	725	815

*Less than $5 million.

a. Alternative 2 assumes ineligibility for all federal means-tested entitlement programs for four years, except for SSI and Medicaid for children, pregnant women, and emergencies.

approximately the same among the unauthorized alien and the legal populations of Spanish origin. Average annual AFDC benefits for these aliens are estimated to be $3,795 in fiscal year 1986, rising to $4,450 in fiscal year 1990. The average federal share of these costs would be 54 percent and the state and local share 46 percent.

SSI Program. The SSI program provides benefits to aged, blind, and disabled persons. Benefit levels are set by the federal government, which pays the full cost of the program. However, states may supplement federal benefits and most do, though usually by quite small amounts. Under Alternative 2, aliens would be eligible to receive SSI upon confirmation of residency status, so that SSI costs would begin in 1986. Costs to the federal government would rise from less than $5 million in 1986 to $70 million in 1990; state costs would reach $10 million by 1990. Our cost estimate is based on a recipiency rate of 0.90 percent of the alien population for the aged and 0.94 percent for the blind and disabled. The recipiency rate for the aged is based on Census data which show 1.80 percent of illegal aliens to be aged, an assumed income eligibility of 100 percent, and a participation rate for the eligible of 50 percent. The recipiency rate for the blind and disabled is based on the current recipiency rate for the United States population. These recipiency rates are not met until 1989 and beyond. Because of the "public charge" test discussed earlier, we assume that only 5 percent of the potential SSI recipients in 1986, 30 percent in 1987, and 75 percent in 1988 would actually qualify for SSI because of disability or low income. 9/ Annual benefits per recipient are estimated to be $4,055 for both the aged and disabled in 1986, rising to $4,400 by 1990.

Food Stamp Program. Food Stamps are issued to eligible low-income households to enable them to obtain a better diet. Benefits (and approximately one-half of state administrative expenses) are funded by the federal government. As with AFDC, most legalized aliens could not receive Food Stamps until 1990 under Alternative 2, although legalized aliens who receive SSI would also receive Food Stamps beginning in 1986. Food Stamp costs are estimated to be less than $5 million in 1986, rising to $30 million in 1990. These estimates assume that after a phase-in ending in 1988, 28 percent of the legalized aliens would participate in the program. This figure is based on the estimated number of aliens added to the SSI, AFDC, and GA rolls, because about 65 percent of Food Stamp participants receive

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9. These same percentages are used to estimate receipt of most of the other entitlement programs as well in 1986-1988.

benefits from at least one of these programs. This number is then increased by 35 percent to account for those who would receive Food Stamps but not AFDC, SSI, or GA. Average annual benefits in 1986 are estimated to be about $548, the current average benefit in the program.

Unemployment Compensation Program. The unemployment compensation program provides weekly cash benefits to workers who are involuntarily unemployed and who have had at least a moderate amount of work experience during a one-year period prior to losing their jobs. Under Alternative 2, unemployment compensation costs for newly legalized alien workers are estimated to rise from $10 million in 1986 to $140 million in 1990. These estimates are based on several assumptions for newly legalized alien workers. Consistent with recent labor force data on young Hispanics, CBO assumes that 80 percent of these workers would participate in the labor force, a higher rate than the average of the U.S. population. Because most probably work in service industries, which are less prone to cyclical unemployment, and because even low-wage jobs in this country probably appear attractive when compared to those in the host country, CBO assumes that the newly-legalized population would have unemployment rates one percentage point lower than those in effect for the rest of the U.S. population. Further, assuming, as some evidence indicates, that these individual's earnings are about 60 percent of those of comparable U.S. production or nonsupervisory workers (and assuming a 50 percent wage replacement rate), we estimate that the average weekly benefit amount for these workers would be about $94 in 1986, one-fourth lower than that for the remainder of the population.

Disability Insurance Program. Persons who are totally disabled (whose disability is expected to last at least 12 months or result in death) and who have sufficient work histories in covered employment may receive DI, which is fully financed by the federal government. Costs in DI of the legalized aliens are estimated to rise from an insignificant amount in 1986 to $35 million in 1990. Because the evidence indicates that unauthorized aliens are relatively young on average, they would be less likely to be disabled than the U.S. population as a whole. Also, because they have been in the U.S. for relatively short periods of time, they may not qualify for DI, which requires for most workers covered earnings during 20 out of the last 40 calendar quarters. For all of these reasons, their DI recipiency rate would be less than that of the U.S. population; we estimate the rate to be less than 0.01 percent in 1986 for those who entered the U.S. before 1977, with this rate rising over time but with a lower rate for those who entered later. Their benefit levels would also be less, reflecting lower than average wages and shorter work histories. We estimate benefits to be about $4,000 in 1986 rising to $4,260 in 1990 for aliens who entered before 1977; those who entered later would have lower benefits on average.

Medicaid Program. The Medicaid program provides health care coverage to recipients of AFDC and SSI and to others who may qualify as "medically needy." Under Alternative 2, Medicaid would be provided to aliens on SSI and to children, pregnant women, and emergency cases who could meet Medicaid's eligibility criteria. Costs are estimated to rise from less than $5 million in 1986 to $320 million in 1990. Estimated numbers of Medicaid beneficiaries are based on numbers of aliens estimated to receive SSI and numbers estimated to receive AFDC who would be children, pregnant women, or in need of emergency services, with some increase for the medically needy. Benefits are current averages per SSI or AFDC enrollee, adjusted to 1986 and later.

Medicare Program. Costs in the Medicare program, which provides health care coverage to the aged and disabled covered by Social Security, would rise slightly beginning in 1988, but would not exceed $5 million through 1990. These costs would be for those aliens who would receive DI.

General Assistance Programs. General Assistance (GA) programs are fully-funded by states and localities and provide benefits to low-income persons and families who do not qualify for the federally-funded cash welfare programs. GA provides both cash payments and medical coverage. Legalized aliens would be potentially eligible for GA beginning in 1986. Estimated costs to states and localities for cash GA would be insignificant in 1986, rising to $140 million in 1990; estimated costs for medical GA would also be insignificant in 1986 and $30 million in 1990. Two groups of aliens could qualify for GA: those who would never be eligible for federal welfare programs (for example, low-income working two-parent families with children and non-aged, non-disabled couples or single persons without children) and those who would be ineligible for AFDC for four years. Among the first group, we estimate that 1.3 percent of the aliens would receive an average annual cash GA benefit of $1,670 in 1986; among the second group, we estimate that virtually all would receive an average annual cash GA benefit of $2,075 in 1986. Medical GA benefits would be lower than cash GA benefits.

Total Entitlement Programs. For all of these programs together, costs of legalization with a 1981 eligibility date are estimated to rise from $10 million in 1986 to $815 million in 1990. The federal share of these costs would be around 58 percent. Costs would rise still further after 1990 as all of the legalized aliens became potentially eligible for the federal means-tested entitlement programs.

Costs of Legalization Under Alternatives 1, 2, and 3

Compared to Alternative 2, Alternative 1, which allows aliens to receive federal programs upon their legalization, would have higher costs. Costs would rise from $10 million in 1986 to $1,165 million in 1990--$350 million above Alternative 2 in 1990 (see Table 4). Until 1990, states would bear none of the costs since there would be 100 percent federal funding. In 1990, the federal government would fund almost 70 percent of the cost and states and localities 30 percent.

Alternative 3, which further restricts receipt of federal programs by allowing Medicaid only to those receiving SSI and by not allowing receipt of unemployment compensation and DI, would have lower costs than Alternative 2: $685 million in 1990, a reduction of $130 million (see Table 5). States and localities would fund the major share of these costs. When aliens are precluded from receiving federal assistance, many would begin to receive GA, which is fully funded by states and localities. In estimating the costs of this alternative, we assume that 50 percent of the aliens who would have qualified for unemployment compensation and 75 percent of those who would have qualified for DI would instead receive GA (cash and medical).

Total costs would decline even more relative to Alternative 2 under Alternative 4, in which no federal programs could be received for four years. Costs would be $570 million in 1990, a reduction of $245 million from Alternative 2 (see Table 6). States and localities would bear all of the costs until 1990, when aliens would begin to be eligible for federal programs.

Senator SIMPSON. Thank you very much.

Mr. Fajardo, please.

Mr. FAJARDO. Thank you, Senator. I, too, would like to thank you for the opportunity to testify here today. I know that MALDEF and other organizations have more than once been a pain in your side and I think that it is a credit to you to have us here, despite the fact that you know exactly what our positions are going to be and giving us this opportunity to testify.

I have a more extensive statement and I would like that introduced for the record. I would only like to summarize the highlights of our opposition or the reasons why we are opposed to your legislation.

Let me start I guess with the position or the provision that we are both agreed on. We both gree on a legalization program. Unfortunately, however, we cannot aqree with this triggered legalization concept. I think it is important to understand that that triggering mechanism is going to make the legalization program absolutely unworkable.

You know as well as I do that various countries that have tried legalization, including Canada and France, that have had very liberal legalization programs, have not had very many people coming forward. England, which has had an approach more like the approach you all take in terms of enforcement on the one hand, legalization on the other, have had almost no persons coming forward, maybe less than 1 percent actually being legalized.

This triggered legalization is going to require persons to show not only continuous residence but continuous physical presence, a definition which the Supreme Court has said will allow no absences from the United States. This means that persons who are picked up between the date of enactment of your legislation and the time that legalization actually takes effect, if they happen to, for whatever reason, leave the country, are not going to be eligible for legalization.

So as Mr. Raul Yzaguirre mentioned before, if employer sanction is not effective, we are not going to have any legalization at all. If it is effective, and persons are selected, and picked up, and sent across the border, there will not be anyone left to legalize.

Sanctions, as you know, have been the major sticking point for us. We are absolutely opposed, unequivocally opposed to the employer sanction concept.

Contrary to what Father Hesburgh said this morning, the discrimination issue is not a flimsy excuse for why we oppose this bill. As mentioned before, there are a number of reasons, a number of incidents where discrimination has already taken place as a result of various operations by the INS.

In San Diego, Hispanic Americans have been taken off trolley cars and asked for their identification. Cabdrivers have been pulled over and the documents of their passengers checked, so much so that cabdrivers are reluctant to pick up any Hispanic Americans for fear that they might be subjected to searches. The list goes on and on of various operations which are resulting in discrimination not against the general public but against Hispanic Americans and other immigrants, and not just Hispanic Americans.

In Chicago, there have been a number of operations that have been directed against Hispanics, against Africans, Pakistanis, and other immigrant groups.

The employer sanction provisions will not replace these operations. They will be added to. Now that the Supreme Court has said that factory raids are legal, you are going to have employer sanctions on top of the factory raids, and that will only aggravate the various abuses.

Father Hesburgh mentioned that there are laws prohibiting discrimination, and it is interesting in that the example he gave I think points out our problem, rather than minimizes it. He says, you know, if a person is asked or identified as a potential immigrant, all he has to do is show his identification and that will kind of resolve the problem, and if he is discriminated against there are laws to protect him.

Well, the fact of the matter is his example pointed out that precisely those persons who look like immigrants, who look like they might be undocumented are going to be asked more to prove their documentation and to prove their legal status. Moreover, the law does not protect everyone. The title VII law has a number of glaring loopholes in it. Small employers are not covered, seasonal workers are not covered, aliens, permanent resident aliens, legal resident aliens are not covered.

The EEOC also has a poor track record of enforcing the rights of Hispanic-Americans. Moreover, the standard of proof that is required is going to be difficult because the employers are going to be able to say as their defense, well, I did not discriminate, I just did not have enough confidence in the various documents or what have you that this person presented to me, I believed that he was an undocumented alien.

The law is designed to help and protect a lot of the employers, rather than the undocumented alien. The H-2 Program also gives us serious pause for concern. The H-2 Program does adopt the certification process of the current H-2 Program but then turns around and gives the growers four different ways in which they can circumvent the certification process.

What this basic program is saying is we do want persons here, we do want them to work, but we only want them as temporary residents, we only want them as our hired help, rather than our legal residents and neighbors, and I think that is a very serious contradiction that goes against the grain of our American immigration policy.

I think that pretty much sums up what we have to say and I again thank you for this opportunity to testify.

[The prepared statement of Mr. Fajardo follows:]

PREPARED STATEMENT OF RICHARD P. FAJARDO

Mr. Chairman, my name is Richard Fajardo, and I am the Acting Associate Counsel for the Mexican American Legal Defense and Educational Fund (MALDEF). MALDEF is a national civil rights organization dedicated to preserving the civil and constitutional rights of persons of Mexican and Hispanic descent. We currently have offices in San Francisco, Los Angeles, Denver, San Antonio, Chicago, Sacramento and here in Washington, D.C.

On behalf of MALDEF, I wish to express our unqualified opposition to the "Immigration Reform and Control Amendments of 1985", S. 1200. This latest proposal adopts the same basic formula for immigration "reform" as the 1983-84 Simpson-Mazzoli Bill: Employer sanctions, a revised and more restrictive legalization program, and a broad temporary agricultural worker program. We are pleased to see that S. 1200 does not change the asylum or judicial review procedures, nor does this bill change the numbers of persons who can legally immigrate to the U.S. or the preference structure. However, the significant changes to how employer sanctions, legalization and the agricultural worker provisions operate make this bill the most repressive, restrictive and dangerous immigration legislation to date.

To be sure, MALDEF has adamantly and actively opposed the "Simpson-Mazzoli" bill since its first introduction in 1981.[1]

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[1] See, e.g. R. P. Fajardo, Testimony before the
(Footnote Continued)

Our opposition to the bill is not to be confused with opposition to immigration reform. MALDEF, like many other Hispanic organizations, favors _fair_ reform of our immigration laws. However, MALDEF will never support any "reform" which includes employer sanctions as a vehicle for controlling undocumented immigration.

EMPLOYER SANCTIONS

The centerpiece of S. 1200 is still employer sanctions: penalties for employers who knowingly employ undocumented aliens. The bill makes it illegal to knowingly employ, recruit or refer an unauthorized alien, or continue to employ an alien knowing the alien has fallen out of legal status.[2] This legislation attempts to reduce the number of jobs available to undocumented aliens, thus removing the economic incentive that draws them to this country. However, imposition of employer sanctions will not

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(Footnote Continued)
Subcommittee on Labor Standards, Committee on Education and Labor (April 11, 1984); R. P. Fajardo, _Testimony before the Subcommittee on Census and Population_ (September 15, 1983); A. Hernandez, _Testimony before the House Subcommittee on Health and the Environment_, _Committee on Energy and Commerce_ (June 17, 1983); A. Hernandez, _Testimony before the House Committee on Agriculture_ (June 15, 1983); J. E. Huerta, _Testimony before the House Subcommittee on Immigration, Refugee and International Law, Committee of the Judiciary_. (March 14, 1983); J. G. Avila, _Testimony before the Senate Subcommittee on Immigration and Refugee Policy, Committee of the Judiciary_ (February 25, 1983).

[2] An "unauthorized alien" is defined as an alien who has not been "lawfully admitted for permanent residence," or otherwise authorized to work by the Act of the Attorney General.

work; it will not stop, or even slow, the flow of undocumented immigrants. Moreover, employer sanctions will have a discriminatory impact on Hispanic and recent immigrants whose physical and/or linguistic characteristics are associated with undocumented immigrants. Given the nature of this discrimination, existing anti-discrimination law especially Title VII, will not adequately protect or remedy discrimination against Hispanics. Finally, plans to institute a more "verifiable" identification system will exacerbate, not alleviate, discrimination.

A. EMPLOYER SANCTIONS WILL BE DISCRIMINATORY

MALDEF's main objection to the employer sanctions provision is that it will have an extremely discriminatory impact upon the Hispanic community. These discriminatory aspects of the bill will be manifested in a number of ways.

First, employer sanctions will create a suspect class of persons: all persons who appear "foreign" will be suspected of being undocumented aliens. Undocumented immigrants are erroneously perceived as taking jobs away from U.S. citizens, making extensive use of social services and otherwise drain the U.S. economy. Many Americans perceive the problem of illegal immigration to be associated with Latin-American, Caribbean or Asian immigrants. As a result there persists a pervasive anti-alien sentiment in many parts of our country. Since many immigrants both documented and undocumented, share a number of easily cognizable characteristics, including appearance, culture, language, and others, it is not surprising that little distinction is made between legal and illegal immigrants.[3] In fact, it is not uncommon for communities in which legal immigrants have settled from developing countries for residents to "routinely comment upon the country's illegal immigrant problems by reference to this entire new immigrant population."[4]

The employer sanctions provision encourages and exacerbates these anti-alien sentiments. Employers are now asked to be vigilant against hiring "illegal" aliens. Thus, all persons who exhibit those characteristics thought to be associated with undocumented immigrants will be scrutinized.

The immediate consequence of the sanctions provision is that employers, faced with possible fines and penalties if undocumented workers are found in their employ, will simply refuse to hire Hispanics and other "foreign-looking" individuals. Even those employers who do not wish to discriminate against Hispanics, will, in an effort to comply with the law, resolve questions of doubt in favor of not hiring anyone who might appear to be undocumented. In addition, employers who do wish to discriminate may now defend their actions by claiming Hispanic applicants failed to produce sufficient documentation to prove they were entitled to work.

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[3] Milton Morris and Alberto Mayo, Illegal Immigration and U.S. Foreign Policy, (U.S. Department of Labor, 1980).

[4] Id.

A second way in which discrimination will surface is that INS will target their enforcement operations to those industries and communities with high Hispanic populations. The INS does not have the resources to enforce current law, let alone the new responsibilities the employer sanctions provision will impose. Thus, the employer sanctions provision will be selectively enforced. Recent INS operations to identify and remove undocumented aliens such as "Operation Jobs" and "Operation Cooperation," have been disruptive to the work place and costly to employers. This has resulted in discrimination against immigrants since employers try to avoid being targets of INS enforcement by reducing their Hispanic work forces. This will result in fewer job opportunities for Hispanic citizens and permanent resident aliens.

INS factory raids have been the primary manner in which the INS seeks to identify and remove undocumented aliens. In many instances, not all workers are asked for identification. Hispanic workers have been separated from other workers during some factory raids and asked to produce documentation of their legal resident status. The raids have resulted in the unwarranted apprehensions and detentions of legal U.S. residents and citizens. Since these raids are disruptive to the workplace and costly to employers, many employers will seek to avoid future problems by reducing their Hispanic workforce.

Proponents of employer sanctions have argued the sanctions will eliminate the need for these raids and that INS officials will simply check employers' records to determine the immigration status of their employees. However, the recent Supreme Court decision in INS v. Delgado [5] held such factory raids to be constitutional. Thus, the factory raid is the primary method to identify undocumented aliens. In all likelihood the INS will raid first, then check records to determine if the employer checked the employee's status. Under the Simpson optional employment verification scheme, record keeping is evidence of whether an employer hired an alien knowing he was undocumented. Failure to keep such records results in a presumption employers hired knowing undocumented aliens.

In addition, the INS has expanded the "raid" operations to other activities in the Hispanic community. In recent months, police officers and sheriffs, in cooperation with the Border Patrol in San Diego area, have stepped up efforts to identify and arrest undocumented aliens. On the basis of Hispanic appearance, they have removed people from public trolleys in order to check their documents. Similarly, officers in the South Bay area between San Diego and the Mexican border have made a practice of stopping cabs, usually on the pretext of a minor traffic violation. They often proceed to check the documents of the passengers.[6] These operations are disturbing beyond the fact that many citizens and documented aliens must suffer the indignity of record verification based solely on their appearance. These efforts fundamentally disrupt a basic right, freedom of movement, while being discriminatory at the same time.

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[5] 466 U.S. __, 104 S.Ct. 1758 (1984).

Similar events have transpired in Chicago. Pursuant to subpoenas issued to the Chicago Department of Consumer Affairs by the U.S. Attorney's Office, officials entered the department to investigate allegations that people taking cab driver licensing exams were bribing officials to guarantee passing scores. The INS joined the investigation and took it upon themselves to search through the Department's files for evidence that recent licensees were undocumented aliens. From mid-December of 1984 through early January 1985, INS officials questioned people who were waiting in line for their licenses. When asked to leave by attorneys for the city these same officials continued checking documents on the sidewalk outside the Department. The officials singled out people appearing to be African, Hispanic or Pakistani for documentation checks. Out of over 800 people checked, only 70 or so were arrested, of 45 Hispanic checked, only three were arrested.[7] Again, the operation was blatantly discriminatory.

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[6] Facts as related to MALDEF by Roberto Hernandez of San Diego's American Friends Service Committee.

[7] MALDEF's Chicago office has filed suit against the INS.

Again, it served to disrupt a basic right, the pursuit of employment, so cherished in this country.

INS operations have been also aggravated by another Supreme Court decision, Lopez-Mendoza v. INS, [8] where the court held that any evidence, even if obtained in violation of the Constitution, can be used in a deportation proceedings. Thus, evidence obtained through questioning, searches, arrest, even if in violation of the Fourth and Fifth Amendments can be used in deportation proceedings. Such a ruling gives the INS more authority and power to identify, pursue and remove undocumented aliens than local law enforcement officers have in day-to-day law enforcement operations. The result has been a dangerous abuse of the constitutional and civil rights of citizens and legal residents who come into contact with the INS. Employer sanctions will not ameliorate, eliminate or even diminish these problems. Employer sanctions provide more power and authority to INS officials which can only result in greater civil rights abuses.

In addition, employer sanctions also effectively require employers to enforce immigration law without the benefit of or familiarity with INS documentation training. As a result, employers unfamiliar with immigration law will make mistakes that will cost Hispanic Americans and other immigrants their jobs.

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[8] 468 U.S. __, 104 S.Ct. 3479 (1984).

During Operation Cooperation the INS sought the cooperation of employers to identify undocumented workers and voluntarily remove them from the work force.[9] However, employers were unfamiliar with many of the documents which authorized aliens to remain in this country. Furthermore, the INS's computer files are not completely up to date. Thus, they cannot verify the documented status of all permanent residents or citizens.[10] The result is that Hispanic citizens and permanent resident aliens will have the burden of proving their documented status to the satisfaction of employers. Even then employers may still not wish to risk hiring Hispanics.

Operation Jobs was discontinued after only one week, but similar problems continue to surface. Employers in the Washington and Oregon areas recently began to question job applicants about their immigration status. One Hispanic applicant to a food processing plant was denied employment because the INS had reported that his green card number was not in their computer records. In fact, the applicant had been a legal resident alien since 1974. It took him three and a half months to prove his status. In the meantime, he was unable to find another job because the other employers in the area were also cooperating with the INS. In short, the INS wrongfully "blackballed" a man from employment for 15 weeks.[11]

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[9] See, e.g. U.S. Civil Rights Commission, The Tarnished Golden Door 70-73 (Sept., 1980) (An excellent discussion of some of the impact "Operation Jobs" had upon employers and U.S. citizens and legal resident aliens).

[10] See A. Hernandez, Testimony before the House Committee on Agriculture, at 7-10 (June 15, 1983). See also Committee on Government Operations, Immigration Service Regional Offices Reflect Mismanagement, H.R. Rept. No. 821, 96th Cong., 2nd Sess. (1980).

Thus, employer sanctions, aggravated by INS factory raids and other interior enforcement operations, will result in discrimination against Hispanics and other recent immigrants. Business will respond to sanctions and other enforcement operations in any one of the following ways: (1) not hiring anyone who may even appear to be undocumented, including Hispanics and other immigrants who look like foreign nationals or speak with a foreign accent; (2) reducing the number of workers in a plant who look foreign, so as not to call the business to the attention of the INS; (3) relocating out of Hispanic communities to communities where there are fewer immigration enforcement activities. Some businesses may choose to relocate to other countries.[12] The irony is that instead of freeing more jobs for Americans, employer sanctions will limit job opportunities especially for recent immigrants. In a tight economic period where there are limited job opportunities, any delay in establishing documented status can be quite costly. A job opportunity once lost, may be difficult, if not impossible, to regain. Moreover, since the majority of workers in most workplaces are legal residents, operations which force business out of the community or overseas will mean a net loss of jobs to U.S. workers.

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[11] Facts as related to MALDEF by applicant's counsel.

[12] Some firms have indicated that if employer sanctions are implemented they would relocate to countries such as Taiwan, Korea or Mexico.

B. CURRENT ANTI-DISCRIMINATION LAWS WILL NOT PROTECT HISPANIC WORKERS

Among the issues overwhelmingly agreed to in the House version of the 1983-84 Simpson-Mazzoli bill was that some anti-discrimination remedy must be included to ameliorate the problem of discrimination created by the employer sanction provisions. Unfortunately, S. 1200 does not include meaningful anti-discrimination procedures.

1. Title VII

Proponents of the Simpson bill argue that sanctions would not be discriminatory, and even if discrimination was a problem, it could be adequately remedied by the Civil Rights Act of 1964.[13] This, however, is not the case because Title VII has many flaws.

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[13] 42 U.S.C. §2000(e). (Hereinafter referred to as Title VII).

Title VII has never provided adequate protections against employment discrimination. In addition, Title VII enforcement has been ineffective in protecting the interests of Hispanic workers. Moreover, given the nature of the discrimination likely to result from employer sanctions, it is unlikely that Title VII will protect or remedy the discriminatory aspects of the employer sanctions provisions.

a. Employer Exemptions. Title VII exempts from coverage both small and seasonal employers. Employers with fewer than 15 employees are specifically exempted from Title VII provisions.[14] In addition, Title VII does not apply to seasonal employees who work fewer than 20 calendar weeks a year.[15] This is especially crucial to Hispanic employees since we tend to be concentrated in industries that are small or seasonal in nature.

b. Employment Practices. In addition, Title VII exempts many employment practices that have a discriminatory impact upon Hispanics. Title VII has been construed to allow the use of discriminatory practices which have a relationship to job performance or are supported by a business necessity.[16] Thus, the Supreme Court has found alienage discrimination (*i.e.*, requiring employees to be citizens) does not violate Title VII.[17] Federal Courts have also upheld employer rules requiring employees to speak English on the job.[18] These exemptions have a severe disproportionate impact upon Hispanic workers.

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[14] 42 U.S.C. §2000(e)-2(e).

[15] Id. Many farmworkers are not covered by Title VII, since they do not work for a given employer for more than 20 weeks a year, even though they may pick crops for a period longer than 20 weeks.

[16] See, e.g., Dothard v. Rawlinson, 432 U.S. 321 (1977); Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975); Griggs v. Duke Power.

c. *Standards of Proof*. Finally, the protection of Hispanics who are able to file claims is limited given the standards of proof necessary to prove a disparate impact case. A plaintiff must prove that the discrimination against him or her was intentional.[19] Plaintiffs have the burden of establishing a *prima facie* case of discrimination,[20] which can be rebutted if an employer articulates -- not proves -- any "legitimate" reason for the discriminatory treatment.[21] Under such a standard of proof, a discrimination case is difficult to prove.

The burden in made even harder when considering the kinds of discriminatory problems likely to result. As indicated in the analysis above, discrimination is likely to be the result of employers identifying a group of Hispanics as those persons likely to be undocumented aliens. Persons fired or not hired or otherwise singled out for disparate treatment will have a difficult time proving a case of discrimination since an employer will have several defenses. First, employers will argue the disparate treatment is necessary to identify undocumented aliens so employers can comply with the employer sanctions law. Furthermore, if an employer fires (or doesn't hire) Hispanics, his "legitimate" reason may be a failure to identify the documents proffered by the alien as genuine.

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[17] *Espinoza v. Farah Manufacturing Co.*, 414 U.S. 86 (1973).

[18] *Garcia v. Gloor*, 618 F.2d 264 (5th Cir. 1980), *cert. denied* 449 U.S. 1113 (1981); *see also Garcia v. Rush-Presbyterian-St. Luke's Medical Center*, 660 F.2d 1217 (7th Cir. 1981); *Cf.*, *Vasquez v. McAllen Bay and Supply Co.*, 660 F.2d 686 (5th Cir. 1981).

[19] *Furnco Construction Corp. v. Waters*, 438 U.S. 567 (1978); *Int'l Brhd. of Teamsters v. United States*, 431 U.S. 324 (1974).

[20] *Id.*

[21] *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

The problem is that many employers will be able to honestly assert that, given the complexity of the immigration laws and the employer's lack of knowledge of procedures, they did not intentionally discriminate against aliens. More problematic is the fact that many employers who would intentionally discriminate against Hispanics will also be able to use these arguments to effectively cover their discriminatory intentions.

d. Lack of Effective EEOC Administrative Enforcement on behalf of Hispanics. The lack of meaningful protection against employment discrimination is aggravated by the fact that Title VII has not been effectively enforced by EEOC on behalf of Hispanics.

The EEOC has never been granted the power to issue cease and desist orders. Instead, Congress has directed the EEOC to administratively eliminate unlawful discrimination through "informal methods of conference, conciliation and persuasion."[22] Thus, the EEOC first seeks to mediate a negotiated settlement between the opposing parties.

It is estimated that only about 4.9% of all EEOC charges in 1982 were on behalf of Hispanics alleging national origin discrimination (about 4330 charges). It was further estimated that EEOC recoveries on behalf of Hispanics amounted to only 1.19% in the same year.[23] These figures indicate that EEOC has not been an effective means of protecting or remedying discrimination on behalf of Hispanics.

The EEOC is also authorized to file civil actions against employers who discriminated, but the cases actually filed are very few. Litigation for the years 1980, 1981 and 1982 amounted to 935 cases. Of these only 27 were national origin claims for Hispanics, *i.e.*, only 2.9% of all litigation. As of April 6, 1983 the General Counsel's office had 536 cases. Approximately 44% were sex discrimination and only 2.4% were national origin, Hispanic.[24]

These figures indicate that the EEOC enforcement mechanism has not been very effective in protecting Hispanics from discrimination. Thus, Hispanics have been forced to seek private counsel to press their claims. However, given the relative lower incomes of Hispanics, the high cost of legal services and the difficulty of proving a discrimination case, it is not hard to see why Title VII is not seen as an effective method for protecting the Hispanic community from the discriminatory aspects of the employer sanctions provisions.

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[22] 42 U.S.C. §2000(e)-(5).

[23] Statistics received from the EEOC.

[24] *Id*.

2. The "Good Faith" Defense

Some proponents of the employer sanctions have also argued that a "good faith" affirmative defense to those employers who check the immigration status of their employees and keep a record of such status, will alleviate the discriminatory impact of this bill.

However, "good-faith" defense protects employers not employees. Where an employer checks documents and keeps records of the legal status of an employee who later turns out to be undocumented, the employer can claim a "good-faith" defense. It is thought that by protecting employers who check the legal status of employees, employers will be more willing to risk hiring Hispanics and so will not discriminate. However, the "good-faith" defense only protects employers who inadvertently hire undocumented aliens. It does not protect those Hispanic employees who are authorized to work but are not hired because their documents are not believed to be authentic. Nor does this provision protect Hispanic employees from employers who deliberately discriminate, claiming an employee has not provided adequate documentation.

In addition, S. 1200 now also includes a presumption that undocumented aliens found working for employers who fail to keep immigration status records hired aliens knowing them to be undocumented. Given the severity of the civil penalties and the nature of the presumption, employers will be forced to keep records of their employees' immigration status. In addition, while there is a requirement that an employer check the documents of all employees, the optional nature of the paperwork requirement and the operation of the presumption may encourage employers to check and keep only the records of those most likely to be undocumented, i.e., persons who look foreign. S. 1200 does not impose penalties for discriminatory record keeping.

3. The Simpson "Anti-Discrimination" Remedy

While the Simpson bill does include an anti-discrimination remedy, the remedy is not made effective upon enactment of the legislation. The bill's remedy would amend Title VII to make it an unlawful employment practice to "fail or refuse to hire an individual because of the individual's national origin." The definition of "employer" would be amended to include persons with more than four employees, but less than fifteen. The bill still would fail to cover employers with seasonal labor, and it would not prohibit discrimination on the basis of alienage, i.e., an employer could still require citizenship as a condition of employment or discriminate against permanent resident aliens. In addition, the EEOC is directed to provide expedited procedures to adjudicate these claims, and would authorize additional sums so the EEOC could carry out its new duties.

However, these remedies, inadequate as they are, would not be made effective concurrent with the enactment of the Simpson bill. The bill requires the General Accounting Office (GAO) to prepare a report on the impact of the employer sanctions provisions. The report is to be prepared one year after the enactment of the bill, and is to include information to determine, among other things, if a "pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment." Then the bill charges the U.S. Civil Rights Commission with evaluating the GAO report. Only if the CRC determines that employer sanctions have had a discriminatory impact and the remedies provided in the Simpson bill will effectively remedy this discrimination, do the Simpson anti-discrimination provisions become effective. Should the CRC find employer sanctions are discriminatory, but will not be effectively remedied by the Simpson anti-discrimination provisions, the CRC is authorized to recommend to Congress changes to existing law that will address these problems.

The anti-discrimination provisions as set forth in the Simpson bill are wholly inadequate. Moreover, the remedies would not be available for at least a year. What are persons who are turned away from employment or who are dismissed from the jobs they now hold supposed to do in the meantime? In addition, the evaluation of the discriminatory impact of employer sanctions must not be left with the U.S. Civil Rights Commission, which has shown its propensity on too many occasions to declare its conclusions before its evaluation.

4. Anti-Discriminatory Measures

MALDEF supported the Frank Amendment which was passed by the House in June 1984 by a vote of 409-9. The provision would have supplemented Title VII and included a procedure to expedite resolution of discrimination claims. To be sure, the provision met resistance during the House-Senate Conference debates, but it was clear that most agreed some form of anti-discrimination remedies are essential to ameliorate the problems created by employer sanctions. MALDEF is disappointed that S. 1200 not only fails to include a meaningful anti-discrimination remedy, but, contrary to indications during the conference, hearings on the discrimination issue are not planned.

It is important to note that while MALDEF supports strong anti-discrimination provisions, we will not support employer sanctions even if such an amendment is included in the bill. Anti-discrimination procedures will not prevent discrimination, they merely provide a remedy to ameliorate the discriminatory impact of the bill.

Moreover, while anti-discrimination measures are necessary, they also point out the irony of this immigration reform bill.

This would be the first time in the history of civil rights legislation that anti-discrimination provisions are included to address discrimination created by the very bill of which they are a part. The best way to address the problem of discrimination is not to create the potential for discrimination, i.e., not to enact the employer sanctions bill.

C. EMPLOYER SANCTIONS WILL NOT WORK

MALDEF is particularly concerned that the employer sanctions provision, while increasing the discrimination against Hispanics will not stop or even, slow undocumented migration to this country.

A recent General Accounting Office (GAO) study,[25] commissioned by Senator Simpson and published in April, 1982, concluded that employer sanctions will not effectively curb illegal immigration. GAO surveyed 20 nations which had adopted employer sanctions. The study found employers were able to evade responsibility for employing undocumented aliens. Insufficient resources and personnel prevented effective enforcement of the sanctions provision. Employers found to have violated the law were either left unprosecuted or were punished with fines too small to be an effective deterrent.

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[25] General Accounting Office, Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries (August 31, 1982).

More importantly, the bill makes no attempt to deal with any of the other reasons why persons immigrate to the U.S. Many aliens come to this country to be reunited with their families, other flee from the political, social and economic upheavals of their home countries. Nor does the bill make any attempt to cooperate with other countries such as Mexico, to resolve the political or economic problems which encourage aliens to leave those countries.

LEGALIZATION

MALDEF supports a realistic and humane legalization program. The legalization program is necessary to bring undocumented aliens "out of the shadows", give them legal rights and a legitimate place in a society to which they have contributed labor, taxes and cultural diversity. But to achieve such a goal the program must include as many persons as possible. In addition, the qualifications must be clear, concise and unambiguous. It must be clear to undocumented aliens who will be eligible and what is required of persons seeking legal status. It is also important that the offer to legalize be genuine and not a pretext for massive deportations or repatriation. The legalization program must not be tied to enforcement, otherwise undocumented aliens will not risk deportation in order to seek legal status.

Legalization benefits all Americans. Undocumented aliens live in fear of detention and deportation. As a result, many fail to report crimes, illness, violations of housing, health and safety or labor laws. Thus, legalization integrates undocumented aliens into the mainstream of American life, conferring obvious benefits upon the aliens, with corollary benefits upon all Americans.

The alternatives to legalization are impractical, disruptive and expensive. Mass deportation, such as those which occurred in the 1930's are very disruptive to the lives of millions, including citizens and legal residents (who are sometimes mistakenly deported along with aliens). Moreover, deportations are deeply offensive to the principle of a free society which the United States holds dear.

Unfortunately, the S. 1200 bill does not embody the principle outlined above. Instead, the legalization proposal presents a token program which is unworkable.

"Triggered Legalization". S. 1200 includes a "triggered" legalization program, that is, legalization is to be implemented after a commission, selected by the President, has determined that the employer sanctions provisions have been implemented and made "substantial" progress in controlling undocumented immigration. This triggered legalization process makes legalization unworkable and ineffective. If employer sanctions are ineffective legalization will never be implemented. If sanctions are effective there will be a few persons to legalize. The bill does not provide any protections for aliens who might be eligible for legalization, but who are picked up between the time sanctions are implemented and when the legalization program is actually implemented.

In addition, the bill does not provide any guidelines or definitions to guide the commission in making its determination of when "substantial" control has been accomplished. This is especially disconcerting since there are no real figures for determining how many undocumented aliens there are in the U.S., so how will the Commission know when they have been removed?

Thus, it is clear that the "triggered" mechanism in Simpson legalization program effectively eliminates the opportunity for undocumented aliens to adjust these status. But is also important to note that even if this triggering mechanism were removed, the balance of S. 1200's legalization program contains numerous problems which leave it unworkable.

The Cut off Date. The Simpson bill provides a one tier cut-off date of January 1, 1980. Aliens who can establish continuous residence since the cut-off date are eligible for temporary resident status.[26] In addition, an alien must demonstrate continuous physical presence in the U.S. since the date of enactment, admissibility as an immigrant, no convictions of a felony or three misdemeanors, and must register for the draft, if appropriate.

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[26] Simpson adopts this structure from the Wright Amendment adopted in the House version of the 1984 immigration bill, although the House bill had a cut-off date of 1982.

The 1980 cut-off date will, however, deny legal status to the vast majority of the undocumented population. The cut-off date should be as recent as possible to be effective. The CBO estimated that under the 1982 cut-off date in the House version of the 1983-84 Simpson-Mazzoli bill, 65% of the undocumented population would actually be eligible for legal status (about 40% under the Senate 1980 cut-off date).[27] CBO also (optimistically) estimated that 60% of these aliens would actually come forward and seek legal status.[28] This means about 40% of the current undocumented alien population would actually seek legalization under a liberal 1982 date! Given the various restrictions and requirements it can be expected that something less than 40% of the undocumented alien population will actually get legal status. Estimates range from 10% - 35%. This, however, means that 90% - 65% of the undocumented alien population will still remain in undocumented alien status!

Under Senator Simpson's more restrictive dates the percentage of persons actually legalized is likely to be even lower. This means our nation will be no closer to assimilating the undocumented population after legalization that it is now.

Moreover, there is every reason to believe that the percentage of persons actually seeking and obtaining legal status will be far lower than the CBO estimates. France and Canada have implemented the most liberal legalization programs to date. Canada, for example, only required continuous residence since a cut-off date two months before the date of enactment and no substantial criminal record. Yet only 26% of the undocumented alien population were actually legalized (52,000 persons legalized of an estimated of 200,000 undocumented aliens).[29] France legalized 42% of its undocumented alien population.[30] On the other hand, England which had a restrictive legalization program which was implemented in conjunction with a strong enforcement program (to "encourage" undocumented aliens to apply for legal status) only legalized 0.2% of its undocumented population (1,700 persons legalized out of an estimated 775,000 undocumented aliens).[31]

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[27] H.R. Rept. No. 115, 98th Cong., 1st Sess. 105

[28] Id.

Thus, it is clear that a 1980 cut-off date will limit the usefulness and success of a legalization program.

Continuous Residence. The bill requires that an alien prove both continuous residence in the U.S. since the cut-off date and continuous physical presence in the U.S. since the date of the bill's enactment. Moreover, the bill requires the residency and physical presence be established by documents and independent collaboration. This will require production of papers such as rent receipts, utility bills, cancelled checks, etc. which will be difficult to produce since most undocumented aliens do not keep written records (which may lead to their detection). In addition, the requirement of continuous physical presence will mean that any undocumented persons who leave the U.S. for any reason after the bill is enacted, especially those picked up as a result of increased employer sanctions enforcement efforts, will not be eligible for legalization, even if the absence is short or voluntary. The Simpson bill does not change the definition of continuous physical presence as defined by the Supreme Court in INS v. Phinpathya,[32] which held that any absence from the U.S., however brief or casual, breaks the continuous physical presence.

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[29] D. North, Amnesty: Confering Legal Status on Illegal Immigrants (Washington, D.C. December 1980)

[30] Id.

[31] Id.

The bill does provide for a temporary stay of deportation and work authorization, but it is only provided to aliens who are picked up by INS after legalization is implemented and only during the implementation period. No protection from deportation is granted to aliens eligible for legalization who are apprehended by the INS after the enactment of the bill but before the implementation of the legalization program.

The bill also gives the Attorney General (i.e., the INS) the authority to establish the definition of "continuous residency" by regulation, along with the documentation necessary to prove such residence. Moreover, the Attorney General is required to specify the periods of absences from the U.S. which would break continuous residence.[33] The Attorney General is also given the discretion to waive breaks in continuous residency for brief temporary trips abroad for emergencies or extenuating circumstances. Any definition of continuous residency should allow for brief absence out of the country. MALDEF would prefer to see such definitions contained in the legislation along lines of the amendment submitted by Senator Cranston and Representative Roybal in last year's bills.

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[32] 464 U.S. __ (1984).

Grounds for Exclusion. There are 33 grounds for exclusion under the Immigration Act (INA). Some minor exclusions are waived by the bill, while serious criminal exclusions cannot be waived. However, a large number of exclusions are waivable in the discretion of the INS. This raises a number of concerns. First, discretion to waive a ground for exclusion is left to INS officials who are also charged with identifying and deporting undocumented aliens. Second, many exclusions have no written criteria or guidelines to determine how the exclusion will be applied. Therefore, it is difficult to determine in advance whether the alien falls under the exclusion and is, therefore, ineligible for legal status. This adds to the risk of deportation and may deter people from applying.

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[33] In particular, persons who leave the U.S. subject to an order of deportation are considered to have broken their continuous residency, while the time a person is outside the U.S. pursuant to advanced parole procedures is not considered as time a person is outside the U.S. for the purpose of continuous residency. It is not clear whether a voluntary return or departure will break continuous residency.

Temporary Resident Status. Aliens who meet the eligible requirements for legal status will only be eligible for temporary resident status. After two and a half years the alien must apply for permanent resident status. To obtain permanent resident status, an alien must demonstrate: continuous residence in the U.S. since he was granted temporary status (although some brief and casual trips abroad are permitted), admissibility as an immigrant, and "basic citizenship skills," *i.e.*, knowledge of English, American History and Government or be enrolled in courses, approved by the Attorney General, to learn these skills (persons over 65 are exempt from this last requirement). However, the public charge provision which may be waived to obtain temporary resident status, may *not* be waived to obtain permanent resident status. Persons who fail to meet these requirements may be subject to deportation after a year.

MALDEF is concerned that this temporary status not be used to encourage aliens to apply for status, only to give the INS an opportunity to screen persons who will be granted permanent status. MALDEF supports the one tier legalization program, but prefers to see applicants get permanent residency.

TEMPORARY AGRICULTURAL WORKER PROGRAM

S. 1200 includes an expanded agricultural worker program which reflects the 1984 House-Senate Conference compromise. This program adopts the existing structure of the H-2 temporary agricultural worker program, but also incorporate a number of the key elements of the last year's Panetta-Morrison provision. An employer must still certify that there are insufficient qualified domestic workers available to perform the necessary work, and that employment of temporary alien workers would not adversely affect the wage and working conditions of U.S. workers. However, S. 1200 also provides four "expedited" Administrative appeals that will effectively allow agricultural employers to circumvent the certification process in any number of situations. This provision will allow agricultural employers to expand the number of agricultural workers they hire while easing the regulations which protect foreign and domestic workers from exploitation.

The bill also provides a three year transitional worker program, which would not only allow agricultural employers to employ undocumented aliens in reduced number over a period of three years, but would also give employers control over who they keep or let go. The concern is that employees with a history of union participation and those who have pressed their rights will be the first to be let go.

At a time when farmworkers cannot even get regulations promulgated to require drinking water and toilet facilities in the fields, an agricultural workers program which expands the number of workers and erases the protection for farmworkers is out of place in this or any legislation.

CONCLUSION

The Simpson bill would have a detrimental impact on U.S. citizens and residents, and will not resolve the problems it is intended to address. More importantly, the bill would change U.S. immigration policies in a manner inconsistent with our history as a nation of immigrants.

On the one hand, Simpson supporters indicate that they want strong controls and restrictions on legal and illegal immigration, yet they also indicate a desire to expand the number of persons temporarily admitted to work in our agricultural fields. Proposals to increase the number of agricultural workers be easing the certification process and wage and work standards (which protect domestic and foreign workers) are especially troubling in light of a Congressional reluctance to enact a broad, generous and inclusive legalization program. The message to immigrants seems to be "you are welcome temporarily as agricultural workers, but not as legal residents".

There is a need for immigration reform. However, immigration reform must be fair and circumspect. Congress should not react to the problems of immigration with short term solutions or vindictive measures. More importantly, immigration reform must not be enacted at the expense of U.S. citizens or resident aliens. Instead Congress should strike a balance of compassion for immigrants and safeguard for our national interest.

Senator SIMPSON. Thank you very much. I do try to listen intently to what you say because it is important and I have done that for all the years that I have been dealing with the issue. I must say that I do not handle that well at all times because the injection of racism has never come from me, it comes from you, Arnoldo, it comes continually from you, the issue of racism, and that is offensive to me. And it does not come from any other source but you and perhaps that is why you have been discredited in the process. I wanted to say that. It is painful and hard and tough, but it is in my craw, and I have said it.

We will come back and you can have your shot, a good shot, as long as you want.

Now, if we can, Mr. Yzaguirre, you make a thoughtful presentation of your case, as always, and I appreciate that. As I hear it, the Council of La Raza opposes sanctions altogether, employer sanctions. I hear that. It favors immediate legalization. I hear that. It opposes any changes in guest worker provisions, opposes a ceiling on legal immigration, opposes any restrictions on asylum applicants even though we are not dealing with those two latter ones in this legislation.

I think I am clearly on record supporting the need for legalization. In fact, I have carried the ball on that one. It seems to me that at some point, I guess it comes back to the issue in all legislation, you take the castor oil with the candy, somewhere. We all learn that in legislation. I take my lumps in everything I deal with. Things I desperately wanted in legislation I watch disappear. You learn how to swallow because people do not watch how you are when you win around here, they want to see how you are when you lose; whether you buckle up your guts and then continue on after you have been slapped in the chops.

But in virtually every immigration case that is decided in the U.S. Supreme Court, the Supreme Court points out what an impossible burden, an absolutely impossible burden we place on enforcement officials by allowing what is best described as a "goofy" situation to continue in the United States where it is illegal for an alien to take a job but not illegal for the employer to hire the person. That continues, and that is the law of the United States of America and let us all get that right on the table first because that is what has got us in this Gordian knot. It is legal to hire an illegal but it is illegal for the illegal to work. I do not say that to be cute, I say it to be real. That is the law of the United States.

Now, how are we going to expect any sort of sensible, humane enforcement either at the borders or internally that is effective and sensible as long as that situation continues?

Mr. YZAGUIRRE. I think the essence of your comments, Senator, is that we perhaps are not interested in immigration reform. And I want to make it very clear that we are very, very interested in it and we will work with you as hard as we can for immigration reform.

What we favor is labor law enforcement. There are very clear studies that show that those firms that are apt to hire undocumented workers and abuse them are the same kind of employers that will violate minimum wage and hour laws, OSHA legislation and a variety of other protections that we have for workers. We think it is a sound approach, we have the mechanism for it, and we would be more than happy to sit with you and your staff to see how we can improve on existing labor laws, including greater funding of the agency responsible for enforcement and even perhaps an INS role in that process, perhaps even a pattern and practice approach. We are perfectly willing to talk to you about those other options.

We have in the past and continue to believe that the most humane, the most cost effective way to deal with immigration control is to deal with it at the border, and we have supported increased appropriations for the Border Patrol. We also believe that increasingly undocumented workers come across not the border but JFK, and we believe that visa abuse control through greater use of computers, through greater controls and better management is and can be an effective way of controlling this entry into our borders.

Senator SIMPSON. How do we do that with the so-called Texas proviso on the books?

Mr. YZAGUIRRE. Well, as I indicated, the problem with the Texas proviso we understand clearly, but, you see, what you suggest leads you to employer sanctions and we clearly identify where we think employer sanctions brings on more problems than it solves.

Senator SIMPSON. Let us leave——

Mr. YZAGUIRRE. We have to deal with the practical problem and the practical results are to us fairly clear, they simply do not work.

Senator SIMPSON. The practical results are that in no other country of the world, even though employer sanctions may not be workable or they might be a cost of doing business, no one has yet said that they are discriminatory. That is a decision you have made and it is not borne out in historical fact.

So I am saying that even if we did not have employer sanctions and nothing were done, what do we do about the Texas proviso which is the law of the United States? Should it be taken off? Should it be left there? And that is what I would like to have your thoughtful view on.

Mr. YZAGUIRRE. We would be happy to provide some written comments on the Texas proviso, but let me get back to your point about discrimination and sanctions. There is not a study in existence that looks at the discrimination impact of employer sanctions or a nationwide basis but the anecdotal instances that we pointed out—and we will be happy to provide you with dozens more—and testimony, for example, by officials in California which has an employer sanctions law, who clearly states that employer sanctions are discriminatory, they do have a negative and untold effect on our community.

We also know due to hearings conducted by one of your colleagues, Senator Orrin Hatch, that the Equal Employment Opportunity Commission is very negligent when it comes to enforcing discrimination laws as they pertain to Hispanics.

Senator SIMPSON. There are a lot of people who dabble in the issue but that is not me. As far as what I am saying and doing, that is clearly of record. So I know not what my brothers and sisters do in this area. I do know what I do in this area.

So I again come back to that haunting refrain, we have got to do something with the Texas proviso, I will be pleased to work with you and that will be something I will continue to do. But in your discussion of potential discrimination you call for a more formal legal structure to deal with discrimination, in addition to that available and long established through the auspices of the EEOC. Do you not believe that the surest way to deter any potential discrimination is by the use of some sort of more reliable worker verification? I mean does anybody not know what is going on now in America with regard to discrimination? How is that possibly good for the status quo?

Mr. YZAGUIRRE. Our position has been that if you were to have employer sanctions, that universal and uniform verification through means that do not require the employer to exercise discretion's is the preferred way of establishing citizenship or legal residency. So we are in agreement that this approach mitigates the problem, but we do not agree that having the universal and uniform verification will eliminate the problem.

Senator SIMPSON. Let me ask you this: Congressman Ed Roybal, a very interesting man, I respect him greatly, I was awed by his courage when he put in a bill with employer sanctions as part of it and then later withdrew that bill in the face of great resistance. It took a lot of courage to do that. I do not think it was blind courage. I think that he was honestly trying to reach some result and have a participation by Hispanic Members of Congress in that result. I admire that.

At one point did not the Council of La Raza, the national council support that original measure?

Mr. YZAGUIRRE. We supported the original Roybal measure, not the one having employer sanctions. We have always had and have consistently had problems with employer sanctions.

Senator SIMPSON. I think there is a recognition there that you—at least I saw it for the first time—that indeed it is the critical issue in immigration reform and it will remain so and we will revisit it again and again.

Let me come now to two or three questions of Mr. Trevino. LULAC has long contended that employer sanctions will be ineffective. That is a given, because simply employers will not comply—I hope I understand the argument correctly—and that it will be discriminatory, that employer sanctions will be discriminatory because Hispanics and other minorities will be carefully scrutinized and eliminated then from consideration as potential employees. They will be omitted from the hiring.

Now, to me that seems to be contradictory, at least in logic, because either employers do not comply and will hire everybody, or they will scurtinize people and documents quite closely and avoid hiring illegal aliens.

Now, which action do you think will occur most often, because it cannot be both?

Mr. TREVINO. Senator, my recollection is that the league is opposed to employer sanctions because we have stated that it will increase employment discrimination against Hispanics and every well-intended employer in the country could well review whatever documents are available for review, given the state of the art and technology in being able to forge documents in this country today—

I recall when you introduced the bill, you mentioned that they were selling Simpson-Mazzoli kits along the border.

Senator, I think that that is a recognition on your part that there is a wide range of documents out there that are easily forged. It is that concern I think that employers will share when they review documentation presented by someone that looks like myself, who is a little darker than Mr. Torres, and that might well come under closer scrutiny by that employer. That employer, however well intended he or she may be, may choose not to subject themselves to the scrutiny of the INS and would opt not to hire persons who may look like me or may appear to be some nontraditional, nontypical American citizen.

Senator, you did mention with Mr. Yzaguirre that you need to take the castor oil along with the candy. Well, I am sure that the prescription calls for a spoon at a time and not for the bottle. I think that what we are looking for here, Senator, is the less onerous means of protecting people's rights in the country, and we have suggested in the past that increased Department of Labor law enforcement would be a less onerous step to take before you take that full jump to employer sanctions.

Senator SIMPSON. I understand. It seems to me that you are conceding that employer sanctions might work.

Mr. TREVINO. Well, Senator, it seems to me that by including employer sanctions within the authority of this Presidential commission to determine whether in fact employer sanctions have been effective, I think that we both concede the same point, we really do not know whether they will be or they will not be.

We do have a concern, however, that they will bring results and they will be effective in causing as increased employment discrimination against Hispanics and other foreign-looking individuals.

Senator SIMPSON. Since that argument does continue to come up, I am required to just state briefly what the bill says, and that is that the employer is required to ask everyone in front of him for their worker verification, not just people who look foreign, but all employees. That is what the bill says. Do you agree with that?

Mr. TREVINO. Yes, sir. I have read the bill and I know that it says that.

Senator SIMPSON. Yes.

Mr. TREVINO. However, I think that—and I would hope that you would agree that there is discrimination in the country. Last night there was a program an hour long that talked with six different cities from coast to coast and they agree that there is discrimination. And while I would hope that we lived in a racist-free society and discrimination-free society, that is not the fact and that is precisely the concern that we share.

Senator SIMPSON. It is a concern I share when I know what goes on right now in this country with discrimination against people who look foreign, who get exploited and used and abused. That does rather concern me.

But I think the key to what I just said, of course, is that if the employer does make this inquiry and ask for these documents and receive them, even if they are forgeries, he is protected, but if he does not do that he loses an affirmative defense. That is what he loses if he decides to not pick someone who looks foreign.

I say discrimination exists and exists to beat hell in the United States of America. That is what I say. And I think that sanctions will not increase it one whit. That is what I say, because they have not done so anywhere they have been used. They might not work, or the fine is peanuts, or it is a cost of doing business, but no one yet has ever said that they were discriminatory.

Mr. TREVINO. If I may, Senator, while it is true that other countries have had discrimination—and the GAO study that was commissioned by the Senate did speak to that—I do not think any other country studied has the pain of history that our country has, Senator. I do not think any one of those countries has such a diverse and multiethnic society as we have.

Senator SIMPSON. Well, France has blacks from all over the world and from the French colonies. The French people have an extraordinary number of blacks and Moroccans and Hispanics.

Mr. TREVINO. Well, Senator, if I may relate a personal experience, when I was in the Army and stationed in West Germany—this was after my tour of duty in Vietnam—many of the West Germans that saw me thought I was a Turk and on that basis they literally would discriminate against me because they would not see me. Now, if they had known I was an American GI, they would probably have booted me out the door.

Senator SIMPSON. I have been thrown out of those places myself in Germany. [Laughter].

Mr. TREVINO. Then I am in good company, Senator.

Senator SIMPSON. I lived there for 2 years and I was fat and white and had hair and got my butt thrown out of those places.

But I am not Hispanic and you are saying something from deep in your craw and I understand that. I would not even try to be flip about that. And it is called discrimination and if anybody in this room believes you change that by passing laws, we are all crazy as hell. If it is in your belly to discriminate, you discriminate and it does not matter what is on the statute books of the world's greatest power. So I think let us just leave that at that, because that is real. That is about the most real thing that we will ever talk about. We will not sponge that away and we already know that as we have grappled with civil rights laws in the United States.

But just another question and then we will move on. Many academics have studied the effect of employer sanctions in Europe. They have looked at the GAO report. We heard comments about it this morning, that there was no employment discrimination occurring. I select a multiracial society such as France, and there is no record of discrimination in France. If you know some, share it with me and let us get together and look at those studies.

Mr. TREVINO. No, sir, I do not know of any.

Senator SIMPSON. Now, Arnoldo, you are going to have an opportunity to fire away because that is part of the spirit and zest of our relationship, but I am fascinated as to what you relate: Nothing really new, opposed to employer sanctions, wanting legalization, protection of human rights—and my answer is always the same, how do you protect human rights when they are here in this country illegally, how do you fully——

Mr. TORRES. Senator——

Senator Simpson. Wait, I am not through, and then you can fire away. Racism—Let us think of 36 human beings in a tank truck in California who were wadded in there by one of the worthies who was getting them on their way up into some form of employment, 36 people wadded into a tank truck. We want to get into the issue of stopping cars, let us get into the issue of stopping trucks and think of what we are going to go into in this country.

We are already looking at surveillance equipment that will pick up through ultrasound the sound of heartbeats in trucks and vehicles and tank trucks, and what is it that is in those? It is called human beings and they are being used and exploited under present laws of the United States of America, because we have on our books the law that I have expressed as being "goofy," which will do until we think of a word that can be used in a family-type situation.

So there are these people rammed in the trunk of a car and when someone stops them, it is not always based upon racism, it is based upon the fact that there are something between 3 and 12 million illegal human beings in the United States. And it is against the law for them to be employed.

Now, that is what you find in the United States. You want more enforcement, more enforcement at the border, more resources for the INS, and that will lead to the exact thing that you detest, sweeps and intrusions and entries into the workplace, and finally those employers will just say I will not hire anyone again who looks foreign.

As far as memorandums and phantom memorandums that float around in this place, do not tie my name to them. I do not even know what you are talking about when you speak about 3 years of legalization and draft memorandums from people I have not even talked to.

Now, with that you are entitled to a level playing field and you may fire the puck right at the net.

Mr. Torres. I have no intention of getting into a spirited exchange with you today. I came here today and thought that I would probably be lambasted by my colleagues for trying to be overly conciliatory with you. I honestly thought that by ignoring the differences that we have on sanctions and trying to concentrate on the H-2 section and trying to improve the legalization section we could make some headway. I did not indicate unqualified opposition to your bill. We have a lot of problems with it. I did not feel that it was written in concrete. I honestly thought that this was the first step.

I never once mentioned racism in my testimony. I indicated an example in your State of Wyoming which, for whatever reason, is a reality. As you have acknowledged, it is a gut instinct. And I do not condone 36 people being put into a truck, but I do not feel that the policy in the propositions that you make in this bill are going to deal with those 36 people in a truck.

If we are concerned with the smuggling issue, let us focus a great deal of the enforcement on the smuggling. That is what we ought to do, and I make that a specific recommendation to you.

I am not going to belabor the debate on sanctions. You have done that for the last 15 minutes and we are never going to be able to see eye to eye on that. I do not want to hassle over that any more. I want to go on to the things that perhaps we can reach better agreement on.

Enforcement—I think it is good to increase enforcement. You allowed that increase to take place. You have encouraged that increase to take place. I do not disagree with that. All I am saying to you is that the rights of people are not mutually exclusive from increasing the enforcement of immigration law in this country, but unfortunately we have dealt with that issue in those terms. That is an imbalance. That is unfair.

In that situation, increased enforcement does result in people being questioned and detained simply because of the way they sound and the way they look. That is what I want to avoid. I do not believe that the bill does that, but I believe that you want to try and do that and that is why I suggest that we ought to be concerned about protecting the fourth amendment rights.

With regards to the memo, I did not indicate that you wrote the memo. I indicated that Commissioner Nelson wrote the memo, and it is an extremely major deviation from what we have always understood your position to be. In the testimony written for the record, I indicate that I hope and I believe that it is possible or very probable that Mr. Nelson misinterpreted your intentions of the bill. I hope that certainly in fact is the case, because I would hate to see legalization and I think and I believe that you would hate to see legalization delayed for 3 years. That would really undermine the intentions that you have always had for legalization, your strong advocacy of it. We compliment you on that. We have always felt you were a strong advocate of it, and we were very dismayed and shocked when we read that draft memo.

Again, I want to try and work things out if we can. There is no point in debating sanctions any longer. We are not going to agree on that. But that does not mean that we cannot agree on the other sections.

Now, I thought that message had come through. Instead, I was told that I have been discredited because of the comments that we make. I am not worried about being discredited, Senator. I am concerned about the fact that a different standard is applied to us, not just myself, when we advocate a position of principle and a genuine, genuine concern, while other people are not. That is an imbalance. That is unfairness. If somebody wants to call that racism, let it be. I am not touching that today. I may tonight and I may tomorrow, but for the record today I am not. That is not my interest.

I want to see if we can agree on something on that H-2 section. I would like to get it out. I would like to have a commission to study it. You are fully aware of my concerns on that.

On legalization, I think we can improve it. I think we can improve it to the point where it will be acceptable to you.

Senator **Simpson**. I really do believe in balance and fairness, I can promise you that. So it disturbs me when I see you doing things which lead me to believe that that is not always the case with others. I personally saw people use antiamnesty for political purposes, and you joined with them, which was an extraordinary departure from balance and fairness. I personally saw that. That was very disappointing to me, and not because of the bill. Hell, I have lots to do in this place without this bill hanging around my neck.

But that is certainly extraordinary—I do not know how to describe it. I will just leave it undescribed. Puzzlement would be the word, total puzzlement. How, a person as bright and thoughtful as you could work actively for persons who use antiamnesty for political purposes and you joined them—appalling.

Mr. TORRES. Should I respond?

Senator SIMPSON. You can if you want.

Mr. TORRES. Well, I think we had an extremely interesting, deliberate, and long discussion on this subject some months back when it first occurred and I would hope, as I said to you then and I will say now for the record–that you would understand the depth of the fear and concern that we had that made us do what you accuse us of doing.

We are committed to improving circumstances in this country for Hispanics, and again we are attempting to do nothing different than the President and yourself have done when your principles guide you, to try and do what you believe to be the right thing.

I think that in most cases when everything is over that despite what the Washington Post and the New York Times write, that most people will understand that has been our position, our motivation.

It was a gamble. It was a very, very uncomfortable gamble, but we honestly believe that passage of the bill was even worse than the present situation. The present situation is almost even now. It is becoming extremely unbearable, and that is why I came today. And I disagree, I am not saying the same thing.

I want to see if we can work things out as much as we possibly can in those areas where we have not always had the impasse, and I hope genuinely that we can do that this time. But as I indicated in the testimony, Senator, 4 years is a long time, a lot of water under that bridge. I hope that we do not waste that water. I hope that we honestly learn something.

Senator SIMPSON. I will not be wasting any of it. I will be glad to visit with you, but we do not need to go back and wash old laundry and old anecdotes.

Mr. TORRES. That is why I do not want to talk about sanctions.

Senator SIMPSON. Well, there is lots to be done and killing legalization is not going to help anybody.

Mr. TORRES. I do not think we want to do that this time around.

Senator SIMPSON. I wondered why we ever wanted to do it, that is the puzzling part to me.

Mr. TORRES. That was part of the bill.

Senator SIMPSON. It is the terribly puzzling part to me, that it would have ever entered the minds of persons on either side of the issue who believe in consistency.

Now, I want to ask you a couple of questions. I was recently discussing matters with an immigration attorney representing many illegal aliens who desire legalization here in the Washington area, and there are many. It is a large number. I could not even get a handle on it, but there are a large number here.

He said he is yet to find one of his clients who are concerned about employer sanction, although all of them are, of course, interested in legalization.

If someone expected that he was going to find it difficult to find or retain a job because of discrimination, I would expect him to mention his concerns about employer sanctions. I would think that he would, yet none seem to do that. It is very curious.

Now, as the polls show, is not this lack of concern about employer sanctions closer to the real voice of some of the people that are most intimately involved, that is, illegal undocumented workers here in the United States, maybe for 2, 5, or 10 years?

Mr. TORRES. I think two responses: One, you gave a good example today. You indicated that the word Simpson-Mazzoli has become such a negative, but when you explain the specifics of it people begin to accept more of the bill. I think that is very much the same with regards to the idea of sanctions and people in our community, the undocumented population accepting the idea of legalization.

Obviously, their major concern is to legalize their status in this country. In that regard, it is a tunnel vision, it is very narrow interest, they want legalization.

At the same time, I think the concerns that we have raised historically and the opposition to employer sanctions does not necessarily deal with discrimination against undocumented people, it deals with the discrimination against U.S. citizens and legal residents of Hispanic dissent. That has been historically the basis of our difficulty, of our opposition for tbe bill. At times obviously it will result in some discrimination for the undocumented, but primarily the undocumented will not be impacted so harshly, hopefully if a good legalization program is enacted by the program itself. Their legal status will be a matter of record. There would be no difficulty in most cases.

But once they become legal residents, then their concerns probably in some cases will be heightened because then they are in fact in that pool of people that run the risk of being discriminated against. Again, it is an issue that is very much as the one you describe of your bill.

Senator SIMPSON. Let me ask you, Arnoldo, and this is a sincere question. I think it would help me to understand your position better if you would give me a specific example of how greater or more intense or more egregious discrimination would result under this bill than is already there right now. U.S. citizens of second or third generation, write to me at the subcommittee and say, "What in hell are you going to do about illegal immigration?" They are asking me questions I was never asked at all 3 years ago or 2 years ago.

Mr. TORRES. Specifically, right now an employer is not going to be randomly questioned or have the INS come onto his workplace simply because he is hiring exclusively Hispanics. That happens many, many times and the INS has the right to do that under certain provisions of the INA.

With the advent of the passage of this bill and employer sanctions, it becomes a new statutory right of the INS or whatever enforcement entity may have it, to basically now begin to make a distinction—that is not being made now—of illegal residency, it becomes a new law, it becomes a brand new test now that the employer has to pass.

An employer at the present time does not have to look at each individual that comes before him or her and ensure that the person is legal or illegal. But the advent of passage of employer sanctions, the employer has yet another responsibility, a responsibility that now he or she is not required to really carry out in most cases unless they are involved in Operation Cooperation or Operation Jobs.

But you basically have a brand new enforcement entity, you have new funds for the INS, you create a brand new entity within the INS to enforce the law, it becomes another law, it becomes an employment law and it is a law that is to discriminate against the hiring of people who are illegally in the United States. That concept is not present law. We believe that it is virtually impossible to distinguish between the legal and the illegal status of people in this country. You do not have a law right there at the present time.

Senator SIMPSON. I know, and what we are trying to go toward a type of revised Social Security card. It would not say on it that you are a permanent resident alien or temporary resident alien or a U.S. citizen. It would just simply say I am authorized to work in the United States of America. I think there could be a clear distinction there that could reduce people saying to people, "Are you a U.S. citizen, you look like an illegal," and the guy says, "you know, I am offended by that—I am not, and would you like to see my card—or whatever it may be. It seems to me that you are almost saying that if an employer was discovered using illegals of whatever race, and it is against the law to do so, are you saying that discrimination is taking place?

Mr. TORRES. No, it would constitute that employer probably being very, very fearful of hiring anybody of that extraction in the future. That is precisely the fear that we have.

Senator SIMPSON. Do you think he is going to feel that soon if we do nothing in the United States as long as the busts go on and the intrusions that——

Mr. TORRES. I think that it is closely getting to that point, the aggressive unrestrained, overzealous enforcement at times by the INS is becoming an extremely heavy burden on the employer. But if you put sanctions in, you give INS yet another weapon. Now if you want to propose, Senator, that we do away with all the other enforcement and we only put sanctions in, I certainly will step away from my partners to my right and sit down and discuss that with you.

Senator SIMPSON. How about the Texas proviso, what would you do with that?

Mr. TORRES. Well, I think, as Mr. Yzaguirre indicated—I thought it was a great response—we will probably get some paper back to you on that.

Senator SIMPSON. OK. It is a deal.

Mr. FAJARDO. I can give you one quick response now, Senator. One of the problems that we have with making an employer have to make a decision about who is documented and who is not is that our history shows that our immigration laws are extremely complicated. We do not even allow law enforcement officers to administer that law, very specifically, because even seasoned immigration officials have sometimes difficulty understanding and implementing our immigration laws. So to try to put that burden on an employer who has no understanding of these things is to put him in a very tough situation.

Senator SIMPSON. You have just said it all. That is what we are trying to do, get rid of a law which is so confusing that no one can understand it, and the reason you cannot understand it is because it cannot possibly be real—the Texas proviso which is part of the law of the United States that says just what I have said a dozen times today. That is what we are trying to get rid of and you replace that with—employer sanctions monitored to assure that they are not discriminatory.

The House and Senate Judiciary Committees are not known for trampling human rights, either body.

Anyway, let me ask you, Mr. Fajardo, on page 5 of your testimony you suggest that employers will face penalties if undocumented workers are found in their employ. Now, that is the quote from your statement, "if undocumented workers are found in their employ." That is a consistent misinterpretation of this proposal that I have been trying to stomp out for about as long as I have been holding these hearings. It is like stomping rattlesnakes out in Wyoming.

As I am sure you would acknowledge, there is no absolute liability for employers here at all. He does not get dinged on just because an illegal alien is found on his payroll, no indeed. The penalties are for knowingly hiring—and I like to keep that distinction because it is rather important, and the employer has to know that the alien is illegal, and if he does not check the individual's documents he is then presumed to know that he is illegal and that is the phrase "knowingly hiring an illegal." It seems to me that is a pretty important distinction when we start talking about discrimination, because if an employer were absolutely liable for any illegals he would have a real incentive, a real incentive not to hire or employ "foreign looking persons." But when the penalty is for knowingly hiring, then the employer's only incentive is to look at the applicant's documents to see if they are reasonably genuine and if they are fake or phony but a reasonable man would not know the difference, he is off the hook. We provide a 6-month education period to insure that the employer understands the system. A 6-month grace period before we hammer him.

Do you not acknowledge that there is a rather extraordinary distinction between absolute liability and knowingly hiring, and a rather critical and important one at that?

Mr. FAJARDO. That is true and I apologize if that distinction was not made in the paper. I think what we were trying to get at is this problem here: After "Operation Jobs" in Chicago, we had a situation in our office there where—you know, the factory raids had been occurring in a number of places and one of the firms in Chicago was afraid that he was going to be next, so he posted a sign on his employees lounge or wherever, basically saying, "I am afraid that we are going to have to check your documents, I want you to all go to the INS and bring me back verification that your green card is in order," put the name of MALDEF and a number of other law offices, and then we were inundated with a number of calls from persons who were permanent resident aliens who were afraid that—they, you know, had gone to INS and INS is not in a position to verify their green card in a number of days, it is going to take them a certain amount of time, anywhere from 3 months to a year to get that verification back. In the meantime they are afraid if they do not get back to their employer within a couple of weeks, they may be out of a job.

What our concern has always been is that, irrespective of the fact that you have a knowingly requirement, the fact of the matter is that this employer sanction provision is going to be put on top of already existing enforcement operations, therefore what we anticipate the pattern to be is a factory raid and then if persons are identified there as undocumented, there will be citations, warnings in the first 6 months or what have you, but eventually citations will be issued to those employers who have found undocumented aliens in their workplace.

Now, to be sure, convictions may not follow, either because they did not know that the person was undocumented or they have records or what have you, but the fact of the matter is that both the enforcement activities in conjunction with the possibility that the persons that are on the workplace may be undocumented is going to add to the discrimination factor.

In addition, you have the problem that just having a large work force that looks like they may be undocumented is going to call attention to the INS as the target of a particular firm for enforcement activities. So what do you do? You get rid of as many persons as you can that might call attention to the INS to that workplace.

I will point out another difficulty that we have. You were mentioning the ID card. The fact of the matter is that your ID card and the optional nature of that ID card allows an employer to check only those ID's of those persons who might be undocumented. While you have a person that says you check everyone, that is not enforceable. There is no requirement that says, hey, you have to check everybody.

And while the affirmative defense may not be available to someone who does not check everyone, the fact of the matter is if I produce documents of those persons who I have checked, that may be the evidence that would rebut the presumption.

Now, how the law operates is again a question because, you know, a lot of this has not been mixedup, but there is a problem.

Senator **Simpson**. I hear you, and of course the thing you described earlier in your response is happening today. Every bit of what you describe is going on right now—sorting through the stack—knowing where the employers are that are hiring illegals, they know where they are. They go dong on them, you know, and look them up every once in a while and rattle the trees. That is not a very pleasant thing to watch and U.S. citizens in there are offended and it is not good. That is what is happening in the U.S.A. today.

Mr. **Fajardo**. And employer sanctions will aggravate that, Senator.

Senator SIMPSON. I do not believe that, when we take away the confusion by making it illegal and a fine of up to $10,000 per illegal alien for someone who is knowingly hiring an illegal undocumented person. I think that is not so.

Mr. FAJARDO. What we have been trying to say though, Senator, is obviously the person who intentionally wants to discriminate is going to be a problem with or without this bill, and I concede that.

The problem is the fellow who really wants to comply with the law as best he can, and when he is—with all the various different pieces of identification, he is going to be resolving any doubt with respect to an individual on the favor of not hiring. And if you get into the situation where if it means hiring somebody who might call attention to the INS, well, that is another factor that will go into the calculation.

Senator SIMPSON. Again, I doubt we will ever agree but we can surely keep talking, but I cannot imagine anything that would discourage discriminatory recordkeeping more than by providing the employer an affirmative defense, to keep him from getting laid low with a series of fines that would choke a horse. The affirmative defense which he is given for following the verification procedure, is given for following it for all employees.

Uniform verification is one of the four requirements in this bill to earn the affirmative defense. You would concur with that, would you not?

Mr. FAJARDO. Senator, you see what you are doing here? What you are saying is—

Senator SIMPSON. Yes, I do.

Mr. FAJARDO [continuing]. You want to stick it to the employers.

Senator SIMPSON. That is what we are trying to do.

Mr. FAJARDO. But then you turn around and say, well, we had better not stick it to him too hard because otherwise he is going to cry too much.

Senator SIMPSON. Oh, we are going to stick it to him pretty hard. I mean what is better than $10,000 on a third offense per illegal when some hire 40 or 50 or 60 in their business? A guy can add that one up in his head even if he loves to use human beings and exploit them.

Mr. FAJARDO. And so is the person going to risk that kind of fine if he has a choice between hiring somebody who looks Hispanic or who might be undocumented, who might run him that risk?

Senator SIMPSON. His job is to inquire of every single person in front of him of their verification.

Mr. FAJARDO. There is an easier way, too, and that is just not hire persons who might give them trouble, right?

Senator SIMPSON. Well, he is not even responsible for the genuineness of the documents. He has an affirmative defense which is not something we take lightly, because it is something defined in civil law and we have civil penalties and it is per person, knowingly hiring illegal undocumented persons, and that is what the bill will accomplish. It is is a humane attempt to do something, that if we do not do something humane and just continue to add bodies to the INS and the Border Patrol, does anybody believe that that is going to be good for this country? I do not.

Mr. **Fajardo**. Senator, this points out another thing. I will be the first to agree with you that over the past *x* number of years we have been lax in the enforcement of our existing immigration laws, but now all of a sudden we want to turn around and say, well, not only should we have the INS enforcing laws, let us have businessmen enforce the laws, too, let us put the responsibility on businessmen, let us have them learn how to identify, document, and what have you.

Well, the fact of the matter is that they are not trained in immigration. That is not their business.

Senator **Simpson**. No, they are not going to be in that business. If we did not have employers embracing the laws of the United States, we would never have a withholding at the employer level. I mean if employers are not in this game, especially those who knowingly hire are going to treat them with kid gloves. That is not the case here. The first offense is $100 to $2,000 per illegal; the second offense is $2,000 to $5,000; the third offense is $3,000 to $10,000 per illegal undocumented person. And I think that is kind of heavy duty. I think that puts quite a responsibility on the employer who chooses not to do this, and that is what we are about.

It is perplexing to me when we say that this will discriminate against Hispanics. How do you not hire Hispanics in certain areas of the United States, in particular industries. We read about the Huddle report at Rice University, a construction industry in the urban areas of Texas. Does anyone believe that they would not be hired? I mean it is an extraordinary adventure in illogic.

Mr. **Fajardo**. Senator, to be sure that there are a lot of Hispanics that are of necessity going to be hired. Our problem is that there are a lot of persons that are on the border, that is, persons who are permanent resident aliens, persons who are recent arrivals who may be legal recent arrivals, persons who are naturalized who still speak with a foreign accent, who still look like they may be permanent resident aliens or illegal aliens. And yet it is those persons that this law is going to be hurting the most. The second———

Senator **Simpson**. Those are the people that write to me.

Mr. **Fajardo**. Let me also make one other comment. We know of a number of firms—and we can get some documentation on this—that have indicated that if employer sanction becomes law, they are afraid that they are going to have to relocate to other areas, whether it be other areas of the United States or whethr it be to Taiwan or Korea or Latin America.

Senator **Simpson**. You mean to go exploit somewhere else?

Mr. **Fajardo**. Or to move their business somewhere else.

Senator **Simpson**. Because they cannot exploit here any more.

Mr. **Fajardo**. Well, the thing is if you are really interested in exploitation, what we have talked about has been———

Senator **Simpson**. So, I am———

Mr. **Fajardo** [continuing]. I mean in terms of cleaning up the exploitation, what we have consistently said is let us clean up our fair labor laws. What I am telling you is if you have 20 to 30 to 40 percent undocumented aliens in a firm and then that firm, as a result of this law, relocates to another country, then how many jobs have you cleaned up if persons who are citizens and permanent resident aliens lose their jobs because somebody has relocated?

Senator SIMPSON. Well, I do not know how many jobs, but that is not the issue. How many people did we keep from getting exploited who live in the United States of America? That would be a pretty good question to ask, too.

Now, we will go on to the next—you have presented enough stuff here and we will process it and we will get back to you if we need further information and we look forward to working with you, Dick Day and the staff, and keep feeding the stuff into us.

Mr. TORRES. Senator, let me just make one last comment. You know, for the last 45 minutes we have focused on sanctions. You are going to win sanctions in the Senate. You have won it every time.

Senator SIMPSON. I am not obsessed by anything concerning this operation, you know.

Mr. TORRES. I am not saying that you are obsessed. I am saying that we focused on a topic, on an issue that is going to pass the Senate. There is going to be a debate and we will be doing what we can to raise the same objections we have raised here to Members of the Senate, but it is going to pass. You know it as well as I do.

I would have liked to have focused more on the details of the H-2 Program which we have indicated problems with. I would have liked to have focused a hell of a lot more attention on the legalization section, which I would like to think that on both sections you are a lot more open to making changes.

You are not going to convince us on sanctions and we certainly are not going to convince you. This is yet the fourth time, at least the 18th hearing in which we have locked horns on the subject.

Senator SIMPSON. Well, that is because we like to argue about employer sanctions, I guess. I do not set the agenda. It is a critical issue and it leads to what you believe are discriminatory actions and that is what we want to be sure does not happen if we do go to this approach.

But the H-2 business, the temporary workers, the Panette-Morrison and hybrids thereof, I want to hear your remarks and if you will furnish me that information I will appreciate it.

Thank you very much. I appreciate your testimony.

Mr. FAJARDO. Thank you, Senator.

Senator SIMPSON. The second panel of the afternoon is composed of Henry Voss, president of the California Farm Bureau; Michael V. Durando, president of the California Grape and Tree Fruit League, Farm Labor Alliance; George Sorn, executive vice president of the Florida Fruit and Vegetable Association H-2 Coalition; Edward Tuddenham, consulting attorney to the Farm Worker Justice Fund; and the Reverend Salvador Alvarez, of the United Farmworkers Union.

I do apologize for the delay and holding you here. As you can see, we were having a spirited discussion of things. I apologize. And if you will proceed in the order on the agenda, Henry Voss, please. Thank you, sir.

PANEL CONSISTING OF HENRY VOSS, PRESIDENT, CALIFORNIA FARM BUREAU; MICHAEL V. DURANDO, PRESIDENT, CALIFORNIA GRAPE AND TREE FRUIT LEAGUE, FARM LABOR ALLIANCE; GEORGE SORN, EXECUTIVE VICE PRESIDENT, FLORIDA FRUIT AND VEGETABLE ASSOCIATION H-2 COALITION; EDWARD TUDDENHAM, CONSULTING ATTORNEY, FARM WORKERS JUSTICE FUND; AND THE REVEREND SALVADOR ALVAREZ, UNITED FARMWORKERS UNION

Mr. Voss. Thank you, Senator. I believe you have our full statement so I will try to highlight that here shortly this afternoon.

I am president of the California Farm Bureau Federation, and a member of the executive committee of the American Farm Bureau Federation. I am the owner and operator of a family farm in San Joaquin Valley.

While we see a number of provisions in S. 1200 that we favor, we also have several concerns. Our main concern is the loss of available seasonal workers on farms and ranches, should the sanction provision of this legislation be passed over our objections and prove to be as effective as the sponsors hope it will be.

As a result, we believe it is essential that language be added to the bill that would provide a reasonable assurance that we would have a workable supplementary foreign worker program.

We view such a workable program to have three facets: First, a transition program that would permit employers of undocumented workers a reasonable period of time to adjust to that new situation; second, certain statutory guidelines to assure a workable H-2 Program in the future; and, third, an optional supplementary worker program for producers of perishable crops.

We are pleased that S. 1200 includes a transition program in section 123 that we find acceptable, providing the regulatory details can be worked out satisfactorily.

We are also pleased with the statutory language for an improved H-2 Program as provided in section 122. Also we recognize, Mr. Chairman, that you have made some effort to accommodate the needs of those employers who produce short-season perishable crops through your 72-hour emergency provision.

However, we do not feel those provisions would be workable on a timely basis because of the size of the program needed. We do, however, favor the addition of provisions similar to the Panetta-Morrison amendment proposed by the Farm Labor Alliance and supported by a wide range of national and regional agricultural groups that was adopted by the House of Representatives last year.

Other provisions of this bill are in line with Farm Bureau policy. We are particularly pleased that the criminal sanctions have been removed, that the recordkeeping penalty has been removed, and that the documentation and recordkeeping provided in section 121 have been made voluntary, rather than mandatory.

These changes considerably reduce opposition to the bill among agricultural employers, since perhaps some three-fourths of the 850,000 agricultural employers in the country have never employed an undocumented worker and have no intention of doing so. Those that are located in the areas where undocumented workers are more likely to be employed will no doubt want to carry out the documentation and keep the necessary records so as to maintain their presumption of innocence.

On the question of legalization or amnesty for those illegals already in the country, we believe this bill strikes a good balance. Farm Bureau policy recognizes the need for a limited amnesty program but opposes blanket amnesty.

But on one subject important to us, S. 1200 is silent. We refer to the right of owners of open fields to require the Immigration Service to obtain a search warrant before entering such places of employment in search of undocumented workers.

To us, this is an issue of simple equity and justice. For years, we have witnessed the fact that the Immigration Service has been finding half or more of those apprehended on farms and ranches, though it is a fact that no more than 10 to 12 percent of the undocumented workers employed in this country are employed in agriculture. We do not agree with those who contend that the search warrant requirement would unduly hinder enforcement. It is more likely to make enforcement more evenhanded.

We want to commend you and the members of this committee for the progress that has been made in drafting of this reform legislation during the past few years. If a way could be found to add to this bill a Panetta-Morrison type program for perishable crops and if a search warrant provision is added, Farm Bureau would be in a position to endorse this legislation. Thank you.

[The prepared statement of Mr. Voss follows:]

PREPARED STATEMENT OF HENRY J. VOSS

The American Farm Bureau Federation is the nation's largest general farm organization with a current membership in excess of 3.3 million families in 48 states and Puerto Rico who are affiliated through 2,762 county Farm Bureaus. Farm Bureau is a bipartisan organization financed entirely by dues paid voluntarily by the members on an annual basis. Farm Bureau members include some 75 percent of all commercial farmers and ranchers in this country and approximately 85 percent of the 850,000 agricultural employers.

Farm Bureau members have taken an active part in efforts to reform the Immigration and Nationality Act during the past several years. Their interest is two-fold: They are patriotic citizens and taxpayers who recognize the responsibility of the federal government to maintain control over our national borders and the growing flood of illegal entry; and a great many of them are employers who would be directly affected by this legislation.

At the annual meeting of the American Farm Bureau Federation last January, the delegates from the member State Farm Bureaus adopted a definitive policy on Immigration Act reform. We include a copy of that policy as an attachment to this statement.

Agricultural employers are against the concept of shifting responsibility for enforcement of the Act to employers through the sanctions provided in this legislation. We have made it clear, however, that our main concern is the loss of available seasonal workers on farms and ranches should this legislative remedy be passed over our objections and proves to be as effective as the sponsors hope it will be in stopping or greatly slowing down the flow of illegal aliens into this country. For that reason, we have placed emphasis on securing language in the bill that would provide a reasonable assurance that we would have a workable supplementary foreign worker program for agriculture.

We view such a workable program to have three facets: (1) A transition program that would permit employers of undocumented workers a reasonable period of time to adjust to the new situation; (2) Certain statutory guidelines to assure a workable H-2 program in the future; and (3) An optional supplementary worker program for producers of perishable crops.

We are pleased that S. 1200 includes a transition program in Section 123 that we find acceptable, providing the regulatory details can be worked out satisfactorily.

We are also pleased with the statutory language for an improved H-2 program provided in Section 122. This appears to be the language that was worked out in the Senate/House Conference last year and is the best H-2 language we have seen in any Immigration Reform bill. There are problems yet to be worked out in the regulatory process, such as the ability of a handful of workers to create a "labor dispute" thus shutting off the availability of H-2 workers, but we are hopeful those problems can be worked out.

We also recognize that Senator Simpson has made some effort to accommodate the needs of those employers who produce short-season perishable crops; but we favor the addition of provisions similar to the Panetta/Morrison amendment that was adopted by the House of Representatives last year.

Other provisions of this bill are in line with Farm Bureau policy. We are particularly pleased that the criminal sanctions have been removed, that the record-keeping penalty has been removed, and that the documentation and record-keeping provided in Section 121 have been made voluntary, rather than mandatory. This change considerably reduces opposition to the bill since perhaps three-fourths of the 850,000 agricultural employers in the country have never hired an undocumented worker and have no intention of doing so. Those that are located in areas where undocumented workers are more likely to be employed will no doubt want to carry out the documentation and keep the necessary records to maintain their presumption of innocence in any charge of knowingly hiring an undocumented worker.

Regarding the question of legalization or amnesty for those illegals already in the country, we believe this bill strikes a good balance. Farm Bureau policy recognizes the need for a limited amnesty program but opposes blanket amnesty.

It should be understood, however, that legalization of a certain percentage of those who entered this country illegally prior to a given date will not assure the continued availability of farmworkers. As we have previously pointed out, a large percentage of the illegals who work on farms do not stay in this country for the entire year. The prevailing pattern is for them to come here to work on our farms for about six to eight months and then return to Mexico or other countries for the rest of the year. They are able to earn good wages here and have an ample income to take it easy for the rest of the year in their native country. This arrangement works out well for both workers and for agricultural employers, since our needs are highly seasonal and only about 20 percent of all agricultural workers are employed on a year-round basis.

Those agricultural workers who are successful in achieving legalization are unlikely to remain as seasonal workers on farms. To live here permanently, they will need year-round employment.

On one subject important to us, S. 1200 is silent. We refer to the right of owners of open fields to require the Immigration Service to obtain a search warrant before entering such places of employment in search of undocumented workers.

To us, this is an issue of simple equity and justice. For years we have witnessed the fact that the Immigration Service has been finding half or more of those apprehended on farms and ranches, though it is a fact that no more than 10 to 12 percent of the undocumented workers in this country are employed in agriculture. We do not agree with those who contend that the search warrant requirement would unduly hinder enforcement. It is more likely to make enforcement more even-handed.

The discussion of this reform legislation over the past several years has already had an effect on agricultural employment. We are witnessing efforts by more agricultural employers to look into the H-2 program. Many have decided that the employment of undocumented workers presents too much of an economic risk, and they are beginning to look for alternatives. When they look into the present programs, however, they discover its shortcomings and often decide it is not feasible for them to depend upon H-2 workers as provided by current regulations.

We have estimated that some 300,000 undocumented workers are now employed, mostly on a seasonal basis on farms and ranches. We know from experience over many years that it will not be possible to replace those workers with American citizens or others who are documented to work here.

If this bill is enacted, approximately 200,000 agricultural employers will have to make the transition away from employing undocumented workers. To a great extent, they will have to rely upon the H-2 program and hopefully an optional supplementary program for producers of perishable crops.

At the present time, only 15,000 to 18,000 H-2 workers are employed in agriculture. While a few employers have found it possible over the years to learn to live with the program as it exists, it would be impossible to expand it sufficiently to meet the needs of agriculture down the road three or four years from enactment of this legislation. That is why we need not only the improved H-2 program as provided in this bill and the transition program, but also the optional Panetta/Morrison-type program that would be more workable for producers of perishable crops.

We want to commend Senator Simpson and this Committee for the progress that has been made in drafting this reform legislation during the past few years. This bill comes a long way toward meeting our objectives. If a way could be found to add to this bill something approaching the Panetta/Morrison amendment, and if a search warrant provision is added, Farm Bureau would be in a position to endorse this legislation.

We shall appreciate your consideration of our views and ask that this statement be made a part of the record.

Attachment A

AMERICAN FARM BUREAU FEDERATION POLICY FOR 1985

Aliens and immigration policies

We recognize the fact that the extent of illegal entry into the United States has reached serious proportions and that the federal government must regain effective control over our national borders.

We will support reasonable reform of the Immigration and Nationality Act along the following guidelines:

(1) Provide a yearly overall cap on the number of immigrants and refugees that can be admitted into this country;

(2) Continue and strengthen screening of aliens admitted so as to refuse entry to criminals, those who present a health hazard to citizens of this country or who would not likely become productive citizens;

(3) Establish an orderly process to better control any mass entry of refugees to ensure minimal impact on any given area of the country;

(4) Oppose the imposition of any type of national identity card, other than the Social Security card, to be used for the enforcement of the Immigration Act;

(5) Clarify and restrict, to the extent possible within the restraints of the Constitution, the rights, privileges and social services accorded in this country to illegal aliens and to resident aliens who have not achieved citizenship status. Conviction of a felony or gross misdemeanor should be sufficient cause for deportation with a minimum of legal procedure;

(6) Require the Immigration and Naturalization Service (INS) to keep better track of foreign tourists, students and other aliens who are admitted for limited periods of time to make sure that such persons leave the country on a timely basis;

(7) Provide penalties in addition to deportation for illegal entry, including confiscation of property to at least partially recompense taxpayers for the cost of apprehension and deportation;

(8) Increase funding for INS to improve the administration and enforcement of the Act;

(9) Afford the owners of farmland the right to demand a properly executed search warrant before agents of the Immigration and Naturalization Service are permitted to enter for the purpose of apprehending illegal aliens, the same as owners of any other kind of private property;

(10) Recognize the need for a limited amnesty, as a part of overall reform of the Act, for illegal aliens who have lived here over a period of several years, have no criminal record, are capable of communicating in the English language and who meet other such minimum standards; but we oppose any blanket amnesty;

(11) Oppose criminal sanctions and civil penalties on employers who employ illegal aliens and favor an exemption from any prohibition of employing undocumented workers for employers who employ no more than three persons. Requirements for documentation and record-keeping should be imposed only on employers convicted of knowingly employing an undocumented worker;

(12) Any legislation that makes it illegal for employers to employ undocumented workers must include a workable program to provide needed nonimmigrant foreign workers in agriculture, since it is clear that it will be impossible to recruit a sufficient number of citizens or aliens who are granted amnesty to fill the need for seasonal workers in our industry. The present H-2 program must be retained and improved. The H-2 program currently does not serve the needs of producers of many perishable crops who employ large numbers of workers for short periods of time. Any workable program must include provisions to serve these needs, and include a transition program of at least three years three years to provide for an orderly transition within agriculture from the employment of undocumented workers to the employment of nonimmigrant aliens admitted legally;

(13) Afford temporary foreign workers in agriculture the same protections of labor laws and regulations as any other workers. Regulatory authority in the promulgation of regulations and the administration of temporary foreign worker programs for agriculture should remain with the Attorney General, with the full participation of the Secretaries of Agriculture and Labor;

(14) Replace the adverse effect wage rates issued by the Secretary of Labor under the current "H-2" program of the Immigration and Naturalization Act with a simple requirement that employers of temporary foreign workers pay them no less than the prevailing agricultural wage rate;

(15) Provide that when workers are referred to employers by the federal/state employment service, private employment agencies, or labor unions, the record-keeping and documentation concerning their legal status should be the responsibility of such referral agencies, rather than the employer; and

(16) We are unalterably opposed to any proposal to place sanctions on employers without enactment at the same time of a workable temporary worker program for agriculture.

Senator SIMPSON. I remember distinctly in one part of the debate last year where the Farm Bureau and the ACLU got together and I just picked up the wreckage after that and I remember they thrashed me good. It was an awesome combination, and I warn you about that one. I will get to that when I get to questions.

Now, Mr. Durando, please.

Mr. DURANDO. Thank you, Mr. Chairman. My name is Mike Durando and I am president of the California Grape & Tree Fruit League, which is a statewide agricultural organization in California, and we represent approximately 85 percent of the table grape and fresh deciduous fruit industries in the State.

I appear before you today as the president of the league as well as president of the Farm Labor Alliance. This is a coalition of some 20 member organizations from predominantly the Western United States, organized in 1983 specifically to deal on a constructive and positive basis with the immigration reform issue.

I would like to, Mr. Chairman, submit for the record a list of the official members of the alliance. I provide that to you so you may have that for the record, and I think you will note after looking over the list that these groups from the Western United States represent approximately 85 percent of the Nation's fresh fruit and vegetable production.

Our basic emphasis—our position today is that we want to work in every way that we can to ensure that the labor needs of the perishable commodity sector are adequately addressed in this legislation through the inclusion of a seasonal foreign worker program.

Mr. Voss before me has made reference to the Panetta-Morrison amendment of last year, and again we are looking at a concept similar to that proposal from last year.

I would like to continue and just summarize my statement and ask that the official written statement be included in the record.

Senator SIMPSON. Without objection.

Mr. DURANDO. And discuss with you for a few minutes what we see as the probable impact of S. 1200, the immigration reform legislation.

First of all, the agriculture sector in the West accepts or acknowledges that employer sanctions will be a part of any immigration reform proposal. Though there may be arguments pro and con for and against them, that they at this point may be the only feasible way to enforce the prohibitions against the employment of illegal aliens.

This being the case, agricultural employers, particularly in the western perishable commodity sector, will be in a position of attempting to procure labor, recognizing that probably in excess of 50 percent of that labor currently are illegal aliens, and will have no choice but to either, first, break the law and hire these workers and produce and harvest the crop and perhaps pay the consequences, or, second, abide by the law, which is what most farmers would prefer to do, not secure the workers and end up losing the vast majority of their perishable commodities.

I make these two comments hopefully in the context of the fact that in the West, and not just California, there has been a historic lack of domestic workers to work in these perishable commodity sectors, and certainly in the West agriculture and the production of farm commodities has been an activity that has been undergoing long before the State of California or any other State became a member of the Union, perhaps over 200 years, and that there is a historic migratory pattern, particularly of Mexican residents who come into the United States on a very temporary and seasonal basis to help produce and harvest the perishable commodities.

Your bill does contain H-2 statutory reform provisions and we commend you for including those. There are some important changes that have been made, and the Farm Labor Alliance recognizes that the H-2 provisions or your new section I think designated as (N) is an important section for those who historically use that program. Indeed, it has worked well for a number of agricultural employers who employ perhaps up to 20,000 agricultural workers a year.

As far as the vast majority of perishable commodity producers are concerned, we have some strong problems with the H-2 Program. Quite frankly, we do not believe that it will work for us, for three major reasons:

First, under the H-2 proposal growers would be required to literally guess up to 65 days in advance of their estimated production or harvest time exactly how many workers they need and when they need them, where they need them and for how long they will require their services.

Second, workers, once they are provided to the employers are tied by a specific contract and are not free to move on a flexible and responsive basis in response to any number of factors, whether they be wage or working conditions or weather changes or crop conditions or the like.

And third, again you are to be commended for your 72-hour provision in the H-2 reform, which is good for the H-2 users, but it is not a provision that will adequately address our situation or prove practical and usable in our industry.

I would like at this point just to elaborate very briefly on an example, to give you an idea what the problem would be. Back in April of this year, 1985, I was on one of my member's farms, which is a nectarine operation down in the Bakersfield area of California. One week prior, there was an employment level of five people. The employer had planned to begin the thinning operation for nectarines and to peak out over a 2- to 3-week period of a labor load of about 350 people.

Because temperatures soared to a level about 25 degrees above normal for a 4- to 5-day period, that entire 3-week thinning period was compressed, if you will, into 1 week's time and the employment peaked out at about 700 to 800 workers, although the employer was trying to secure 1,000, 1,100, 1,200 workers or more—my whole point being that the employer could not predict 65 days in advance, let alone 1 week in advance what was going to happen, and even if he had and even if the Department of Labor had allowed additional workers to be brought in, they would not have been brought in on a timely basis. He was able to get as many workers as he could daily and still ran 1 week behind schedule. One additional week and there would have been significant crop problems.

Additional examples can be drawn over and over and I will not go on except to say that the nature of our industry prevents us from using this type of program.

In summary, let me just mention that we have a proposed solution similar to last year's Panetta-Morrison type amendment. It is a proposal that is currently in the final stage of being finalized. We want to try and conform it to your legislative format, and we hope to work with you in the next few days and weeks ahead to try to come up with a constructive solution to our problem.

In our view, this legislation will not be complete unless there is a two-track or a complimentary program approach for the agricultural worker situation. In that regard, I know we are running short on time, I will conclude my comments and be glad to respond to any questions that you might have. Thank you.

[The prepared statement of Mr. Durando follows:]

PREPARED STATEMENT OF MICHAEL V. DURANDO

My name is Mike Durando and I am President of both the California Grape and Tree Fruit League and the Farm Labor Alliance, an umbrella organization representing the interests of the growers, processors and marketers of perishable commodities.

The California Grape and Tree Fruit League is a voluntary membership organization that represents growers and shippers of fresh grapes, peaches, pears, plums, nectarines, cherries and other deciduous fruits that are produced in California. The League represents about 85 percent of the total product grown and shipped from California.

The Farm Labor Alliance, of which the Grape and Tree Fruit League is a member, is a nationwide voluntary membership alliance whose supporters include every segment of the food chain as it relates to the production of perishable commodities.

The Alliance, for whom I am speaking today, was formed in 1983 by those involved in the production and distribution of perishable commodities when it became apparent that immigration reform legislation could have a major impact on the labor intensive harvest of perishable crops.

I would like to emphasize that while the preponderance of that impact would be on Western agriculture, the problem affects a majority of the states from Vermont, Nevada and Iowa potatoes to Alabama and South Carolina peaches to Pennsylvania and Utah cherries to Ohio, West Virginia and Illinois apples to Arizona, Maryland and Delaware truck farming crops.

The thing that distinguishes the Alliance membership, and the major factor in our concern about this legislation, is the very perishability of the commodities either grown, processed, or distributed and sold by Alliance members and supporters and consumed by the American public.

The scope of those who have supported and continue to support the efforts of the Alliance ranges from Western Growers Association in California to the Georgia Peach Council to the American Farm Bureau to the National Council of Farmer Cooperatives to the National Food Processors Association to the American Frozen Food Institute to the Food Marketing Institute. (I will submit for the record a list of the Alliance membership.)

As you can see, Mr. Chairman, the Farm Labor Alliance is not a narrow group of just a few farmers. It represents literally thousands of individual growers, mostly of 50 acres or less, and every aspect of the food chain from production to the grocery store.

And if I can be so bold, I would also state that we represent every single American consumer who relies on our members to provide him or her with a fresh, reliable supply of fruits, vegetables and other perishable foodstuffs at a reasonable price.

Mr. Chairman, the members of the Farm Labor Alliance do not disagree with the basic premise of immigration reform legislation -- that the problem of illegal immigration has grown over the years and there is a need for this country to address the problem in a manner that will enable us to regain control of our borders.

Our only concern is that in the process of doing so we provide the necessary flexibility that will allow the production and harvesting of perishable commodities to continue unimpeded.

As you are aware, members of the Farm Labor Alliance, especially the grower members, have come a long, long way on this issue since we started. Quite frankly, the initial reaction of some growers was total opposition to immigration reform legislation because the current system of using a migratory seasonal work force -- much of it illegal - generally works well.

But over time, our members developed a consensus that immigration reform legislation was necessary and probably inevitable, and that we should work together for a positive solution to the possible problems posed by such legislation. It is our strong regret that the Alliance was unable to get organized sufficiently to present a united and comprehensive position in 1983 during Senate consideration of immigration legislation. As a result, we were unable to participate in a meaningful way in the Senate's deliberations. We did, however, get together in time for House consideration and the result, as you know, was the Panetta-Morrison Amendment.

Once the immigration reform legislation died at the end of last Congress, the Farm Labor Alliance began working with its members, the members of Congress, and all affected groups and interests in hopes of developing legislation that is fair and equitable to all concerned, and which assured the continued ability to harvest, process and distribute a stable supply of perishable commodities.

As you know, Mr. Chairman, we have met extensively with your staff. We have offered suggestions. We have answered your questions. And we have continued to be open to any reasonable solution that might be suggested by you or other members of this committee.

I have often stated that it is very difficult for someone who has not witnessed it first hand to visualize and understand the variety and complexity of Western agriculture, where most of the perishable commodities are grown.

In California alone, there are over 260 crops grown -- and about 150 of them (or nearly 60 percent) are perishable in nature. In addition to the number of perishable crops, there can be scores of varieties for each crop. For example, fresh market peach varieties number over 140, nectarines over 100, and plums over 125.

Each crop variety has its own cultural requirements (thinning, crop protection, irrigating, leaf pulling, etc.), its own harvest schedule and its own requirements for labor. This variety and complexity are unlike what you will find in most agricultural regions of this country, and it is that very uniqueness that creates our special labor needs and requirements.

Today, we have an adequate availability of field labor for producing perishable crops. The vast majority are Hispanics who are in this country legally and illegally. The workers come to be employed through a variety of means: farm labor contractors, crew supervisors, labor union hiring halls, state employment services, labor associations and individually. There is a functioning network in place that provides employees where and when they are needed -- which is the bottom line for perishable agriculture.

The migrant workers, upon whom western growers of perishables have had to rely, have established work patterns that may involve local or regional migration. It is this migration that distinguishes the eastern grower who may be able to use the H-2 program and the western grower who cannot.

These workers have flexibility to follow the harvesting of each of the many perishable crops as they ripen. They follow a south to north path in accordance with the growing season, and are not restricted to a particular grower, as is the case under the H-2 program.

This migration has been very effective in meeting the production needs of the growers and represents the product of an intelligence system that has developed and directs migrant workers to those farms where the need exists for a particular crop at a particular time.

The system is unstructured but it is highly effective in providing the necessary manpower to harvest a large number and variety of crops that ripen in rapid succession, and which are highly susceptible to changes in weather conditions. The fact that the system is so effective should not be surprising because what it does, in simplest terms, is employ the basic principles of a free market system -- supply and demand. When the demand for workers is there, even when it is an emergency requiring help within hours, the free market system as now exists is flexible enough to supply those workers in time to harvest the crops.

Those who provide field crews play an important role in the many complex services that both the employer and the employee require. The migratory worker recognizes that the annual peak work season lasts 90-180 days, and it is important that he/she not be idle during this short period.

Many workers look to the contractor or other recruiters to help provide continuous employment with numerous producers of diversified crops. It is not uncommon under stringent harvesting conditions that individual workers be employed by more than one farmer on a given day. These complex placement arrangements are facilitated by a system of efficient contractors and crew leaders and, of course, the flexibility and efficiency of the free market.

Perhaps it would be helpful, Mr. Chairman, if I described a situation I personally encountered in April, 1985 with one of my own members of the Grape and Tree Fruit League. This particular grower had a nectarine crop that he was preparing for harvest at a later date when California unexpectedly experienced four straight days of 90 degree plus weather. That is about 25 degrees above normal and it greatly accelerated the ripening of his nectarine crop.

I visited this farm on a Thursday. Exactly one week prior to that date, he had a total work force of five people, who were primarily engaged in thinning the nectarine trees. When I arrived a week later, he had over 700 people working, and was planning to add more.

Even by adding 100 more workers per day -- if they could be found -- the thinning operation ultimately fell a week behind schedule, a critical time lag at that stage of fruit maturity. The volatile nature of such a situation is shown by the fact that the expected peak employment was 300 workers. Instead, the thinning time frame was compressed considerably and the employment level shot up to 700 in just 7 days.

This example both illustrates the problem that changing weather conditions can create for perishable crops and shows how efficiently the flexible, free market system responded to get the grower the workers he needed to respond to the emergency and save his crop.

This example is not unique. It can happen to any of the hundreds of specialty crops represented by the Alliance's membership, and each crop and variety thereof responds in its own way to changing weather conditions. Predicting the harvest time for each of these crops and varieties is analogous to the guessing game you have here in Washington trying to predict when the cherry blossoms will bloom. Weather can delay the harvest as well as speed it up. Many less perishable crops can accommodate to some change in climatic conditions but the more perishable crops that we represent are at the absolute mercy of the weather. And that, of course, directly affects the number of workers needed and the time (sometimes literally within hours) when they are needed.

But this changing demand occurs even in normal circumstances when no emergency arises. Consider, for example, the swelling demand for labor in the cherry industry, where labor requirements rise from a level of 4.5 man hours per acre in the month of March to a peak of 316 man hours per acre during the harvest period of May to June. This meteoric rise in demand for labor is followed by a correspondingly dramatic drop in demand, as only about two man hours per acre are required in the month of July.

As you can readily see, there is extreme volatility in demand under normal circumstances, not to speak of what happens during a weather emergency. And that brings me back to our primary concern about the pending immigration reform legislation. It must be flexible enough to respond to those kinds of situations, and do so in an efficient and timely manner or it could bring about economic disaster for our members and supply shortages and higher prices for the American consumer.

The many varieties of horticultural crops have been developed specifically to meet consumer demand for a variety of year-round top quality fruit and vegetables. If this demand is not satisfied domestically because of labor shortages, other countries will fill this demand, further affecting our serious balance of trade and payments problems.

Our members' worst fear, Mr. Chairman, is that with an inflexible system they could end up with an emergency and no way to respond. In that case, he would have one of two choices: break the law (employer sanctions), or lose his crop. I think you will agree that neither choice is acceptable.

This brings me to a discussion of the H-2 program and the the proposed modifications to that program contained in S.1200 -- and a discussion of how this would affect our members and the harvesting of perishable crops.

The H-2 program has served the needs of certain growers and certain crops of a less perishable nature, and the proposed modifications contained in S.1200 certainly should improve that program. We support the H-2 program for those who can use it, and we support the improvements added to S.1200.

However, it is the position of our Alliance that even with those modifications the H-2 program still will not have sufficient flexibility to deal with the needs of perishable agriculture in an emergency situation, or even under normal operating conditions.

The legislation requires employers to make a nationwide search for domestic workers and petition the Department of Labor up to 65 days in advance of the anticipated date of need. There are several problems with this requirement. First, if the number of domestic workers determined to be available fail to show up at the time of need, as is often the case, employers face a worker shortage unanticipated when their petition was filed.

Moreover, the 65 day requirement places farmers in the difficult position of having to predict in advance when a particular crop will be ripe. For reasons I have already discussed, it is impossible to predict with any degree of certainty when that will be. And a delay of a few days, or even a few hours, may result in a devastated crop.

If farmers schedule H-2 workers too early they are saddled with the exorbitant cost of paying and sheltering an idle work force. If, on the other hand, the number of anticipated domestic workers fail to arrive or arrive too late, the crop could be lost.

Although the provisions in S.1200 which allow an association to seek certification on behalf of a group of employers and thus provide mobility within the limits of the association is a positive step for those who can use the H-2 program, we still do not believe it is a satisfactory alternative to existing migratory patterns in perishable agriculture. It deprives each individual employer of control over the production and working conditions of his own workforce and makes him ultimately responsible for violations by other association members. Our members also believe that a free market type system can do a better job of allocating workers where the needs are greatest.

Finally, I would like to briefly discuss the emergency provisions contained in S.1200, the so-called 72 hour provision.

The emergency provisions would only be triggered when a "critical need" exists. Once a grower feels a critical need exists, he would have to wait for 72 hours for the Department of Labor to make a decision on the petition. This would have to be done as to each of the thousands of growers who could be affected by weather-created problems.

We are skeptical that the Department of Labor, which currently has difficulty processing H-2 petitions for some 20,000 workers, would be able to process within 72 hours hundreds or even thousands of emergency petitions involving many, many thousands of additional workers that might be needed as a result of a weather emergency within perishable agriculture.

And even assuming that the processing could be accomplished in 72 hours, the government and grower would still have to: establish a contractual relationship between foreign workers and growers, acquire proper visas and documentation, travel to the foreign country and recruit the workers, and return the workers to the U.S. to specific growers.

I can foresee many situations in which major weather changes could create a "critical need" that would have to be met within a day or two. There would not be time for a 72 hour appeal, much less the time required to produce the necessary paperwork and travel.

For these reasons we do not believe the 72 hour emergency provision will be sufficient to meet the "critical needs" that might arise in perishable agriculture.

That being the case, we continue to believe that additional flexibility, similar to that contained in the Panetta-Morrison Amendment last year, is both necessary and justified.

As I mentioned earlier, we have made a conscientious effort since last Congress to discuss the Panetta-Morrison approach and seek improvements which will answer some of the concerns that have been expressed by members of Congress and others.

I would like to briefly mention some of the changes to last year's proposal that we have made:

1. An increase in the wages withheld from the worker, to be returned through the U.S. consulate upon the worker's return to the country of origin and upon showing proof of compliance with the program. This will help assure that the foreign workers return home.

2. A reduction in the time limit that a seasonal worker may remain in this country from the 11 months contained in Panetta-Morrison.

3. A system of tracking and monitoring whereby the grower would report to the government within 72 hours of hiring and terminating a worker. This will help assure that the worker stays

continuously employed and complies with program requirements.

Our growers have had a very positive, personal relationship over the years with foreign seasonal workers. We are proud of the fact that under the program we are suggesting, workers will no longer have to pay a coyote $350 to cross the border, he or she will no longer be afraid to go to the grocery store or bank, and they won't have to pay to get back across the border. Their living conditions while in this country will be protected, and they will have the dignity that comes with legal status.

The Farm Labor Alliance stands ready to consider other changes and improvements that might be suggested by the committee. It has always been our hope and desire that we can work out a compromise mutually acceptable to everyone.

But the bottom line for our members, Mr. Chairman, must be a program with enough flexibility to assure that we can get enough workers in time to harvest the perishable crops. Fresh fruit and vegetable farmers are suffering the same economic pressures as the rest of American agriculture, and we simply cannot afford to gamble on a program that does not have that kind of flexibility.

FARM LABOR ALLIANCE MEMBERS

CALIFORNIA ASSOCIATION OF WINEGRAPE GROWERS

CALIFORNIA FARM BUREAU

CALIFORNIA GRAPE & TREE FRUIT LEAGUE

CALIFORNIA WOMEN FOR AGRICULTURE

CENTRAL CALIFORNIA FARMERS ASSOCIATION

FRESNO COUNTY FARM BUREAU

FRUIT GROWERS LEAGUE OF JACKSON COUNTY

HOOD RIVER GROWER-SHIPPER ASSOCIATION

HOP GROWERS OF WASHINGTON

INDEPENDENT FARM LABOR CONTRACTORS COALITION

NISEI FARMERS LEAGUE

NORTHWEST HORTICULTURAL COUNCIL

OREGON FARM BUREAU FEDERATION

RAISIN BARGAINING ASSOCIATION

SUN-DIAMOND GROWERS OF CALIFORNIA

WASHINGTON ASPARAGUS GROWERS

WASHINGTON GROWERS CLEARING HOUSE ASSOCIATION

WASHINGTON STATE HORTICULTURAL ASSOCIATION

WESTERN GROWERS ASSOCIATION

YAKIMA VALLEY GROWER-SHIPPERS

Senator SIMPSON. Thank you very much.

Mr. Sorn, please.

Mr. SORN. Mr. Chairman, I am George Sorn, and I am here today primarily representing the H-2 coalition. The coalition is an ad hoc group of agricultural employers who currently use the H-2 Program and some agricultural employers who feel they may need to rely on the H-2 Program if legislation is enacted which makes it illegal for employers to utilize illegal aliens.

We do appreciate the opportunity to appear before your committee, to express the need for a workable temporary agricultural worker program as an integral part of immigration control legislation and we do commend your efforts in S. 1200 to do so.

The coalition believes that the temporary workers provisions of S. 1200 provides an adequate framework for meeting the supplementary labor needs of present and potential H-2 users and for protecting the interests of domestic and H-2 farmworkers. Let me stress, however, that we cannot speak for all agricultural employers and we are not prepared, to say this program, even as modified by S. 1200, will meet all domestic agricultural labor shortages in all situations. However, with two reservations I will mention shortly, we believe it will meet the minimum statutory requirements for a workable H-2 Program and we support its adoption for this purpose.

Agricultural employers across the United States have continually experienced shortages of agricultural labor, particularly for seasonal jobs. For various reasons, illegal immigrants have moved in to fill this void. In many areas of the country, illegal workers now comprise a substantial portion of the seasonal agricultural workforce, therefore, effective control of illegal immigration, a desirable national goal with which we agree, will have a significant impact on the adequacy of seasonal agricultural labor for many U.S. employers.

The problem is not new, though it may well be more serious than in the past. The difficulty with using the current H-2 program have certainly been a factor contributing to the increased number of illegal aliens employed in agriculture in recent years.

As you know, Mr. Chairman, from the very beginning of the debate on the control of illegal immigration in the United States, H-2 employers have maintained that effective control of illegal immigration would require continuing and improving the H-2 program if it were not to have a traumatic effect on U.S. agriculture. We have advocated statutory and regulatory provisions that would assure agricultural employers quick and certain access to sufficient seasonal labor to meet shortages of U.S. workers at wages and working conditions that are fair and reasonable to U.S. workers similarly employed.

The H-2 temporary alien worker provisions of S. 1200 are the result of years of discussion, debate and compromise. S. 1200 does not include everything H-2 employers have wanted and have advocated. Additional critical issues will have to be addressed in the regulatory process. We do feel, however, that S. 1200 reaffirms the intent of Congress to provide agricultural employers facing a domestic labor shortage with one means of obtaining seasonal workers. It provides workable parameters within which such a program can meet the needs of H-2 employers and protect H-2 employees and domestic workers.

There are two important changes in the temporary worker provisions of S. 1200 which we would respectfully recommend. The first relates to our concern about employers' responsibility for workers who move around the country seeking H-2 employment under the provisions of the proposed Section 216(f)(3). As the H-2 Program currently operates, H-2 workers can remain in the United States for brief periods if the worker has a job promised by an eligible employer at the time he completes a contract. When this occurs, everyone concerned has knowledge of the worker's initial employment location and the location of the next job opportunity.

The first employer is responsible for the worker until the day this responsibility is transferred to the subsequent employer. Mr. Chairman, should it be the intent of the committee to allow workers freedom to travel around the country at will seeking another certified job after the completion of an H-2 work contract, it is imperative that the releasing employer be specifically exempt from responsibility for the worker once the worker has completed employment and exempt the receiving employer from responsibility for the worker until the worker starts the new employment, otherwise the releasing employer could be held responsible for the worker—including the payment of liquidated damages or forfeiture of a bond—during a time when no employer knows the whereabouts of the worker nor has any control over the worker's movements nor knowledge of his intentions.

Our second concern is with section 124 of S. 1200, the Commission on Agricultural Worker Programs. The agricultural H-2 Program has been studied for years by numerous commissions and legislative panels.

On several occasions over the past 4 years this Immigration Subcommittee, under your able chairmanship, has done an outstanding job of hearing the issues on the subject. Your counterpart in the House has done the same. We have full faith in the current congressional oversight system and we feel strongly that subsequent problems that may develop can and should be taken up through the existing oversight procedure, rather than through another commission set up specifically to study agricultural worker programs.

We feel the Commission is unnecessary. However, Mr. Chairman, if you and the Congress deem the Commission a necessity, let me respectfully point out that fewer than one-third of current H-2 admissions are in agriculture. Additionally, representatives of the Justice Department have stated publicly that less than 20 percent of the illegals in the United States today work in agriculture. Additional, both under current regulation and your proposed legislation, the admission of agricultural workers for temporary employment is singled out for more restrictive, burdensome and costly government controls than admissions for nonagricultural temporary or even permanent employment.

Nonagricultural employers need only to conform to prevailing wages and practices in the occupation and conduct a local job search. There is no such thing as a nonagricultural adverse effect wage rate, three-quarter guarantee, paid transportation, free housing, et cetera, which agricultural employers are required to provide. The H-2 coalition feels strongly that the Commission has been set up to study the wrong program. But if a commission is to be mandated, such a commission should also study nonagricultural temporary worker programs since this is the area where most of the current H-2 workers and most of the illegal alien workers are located and where most of the problems will probably occur if use of illegal workers is curtailed.

Mr. Chairman, the H-2 Program as modified by your proposed legislation will make the H-2 Program more workable without displacing U.S. workers, lowering wages and job standards, and contributing to unemployment.

Senator SIMPSON. Could you please conclude your remarks? That will all be received in the record, Mr. Sorn. I hate to be rude, but in fact we are behind.

Mr. SORN. Mr. Chairman, we have come a long way over the past few years in debate and compromise and we do thank you and commend you for your very intense interest and consideration in the process. Thank you.

[The prepared statement of Mr. Sorn follows:]

PREPARED STATEMENT OF GEORGE F. SORN

Mr. Chairman, I am George F. Sorn, General Manager of the Florida Fruit and Vegetable Association, a statewide agricultural association headquartered in Orlando, Florida. I am here today representing the H-2 Coaltion, an ad hoc group of agricultural employers who currently use the H-2 program and agricultural employers who may need to rely on the H-2 program if legislation is enacted which makes it illegal for employers to utilize illegal aliens. The Coalition appreciates the opportunity to appear before the committee to express the need for a workable temporary agricultural worker program as an integral part of immigration control legislation.

The H-2 Coalition believes the temporary worker provisions of S1200 provide an adequate framework for meeting the supplementary labor needs of present and potential H-2 users and for protecting the interests of domestic farmworkers. We cannot speak for all agricultural employers, and we are not prepared to say this program, even as modified by S1200, will meet all domestic agricultural labor shortages in all situations. However, with two reservations I will mention shortly, we believe it will meet the minimum statutory requirements for a workable H-2 program.

Mr. Chairman, the agricultural industry accounts for a significant share of our Nation's employment. More than 800,000 farms employ hired workers on a seasonal or year round basis. The U.S. agricultural payroll is in excess of $9.5 billion annually. Over the course of a year, U.S. farmers provide 4.5 million jobs for workers. More than 2 million U.S. residents fill these jobs and earn some or all of their total annual income from hired farm work. Millions more are employed in industries that supply inputs for agricultural production and handle or process products produced by our Nation's farms.

Agricultural employers across the United States have continually experienced shortages of agricultural labor, particularly for seasonal jobs. Many U.S. workers, for understandable reasons, prefer jobs which are not seasonal or temporary, do not involve hard physical labor in outdoor surroundings subject to the rigors of nature, do not prefer to live in rural areas, and do not wish to uproot or separate families to travel to rural areas where most seasonal agricultural jobs are located. Illegal immigrants have moved in to fill this void. In many areas of the country illegal workers now comprise a substantial portion of the seasonal agricultural work force. Therefore effective control of illegal immigration, a desirable national goal with which we agree, will have a significant impact on the adequacy of seasonal agricultural labor for many U.S. employers.

This problem is not new, though it may well be more serious than in the past. Throughout most of the history of American immigration law provision has been made for the admission of aliens to meet seasonal and temporary labor shortages. Although the H-2 program, which provides for the admission of both agricultural and non-agricultural workers, has operated since 1952, it has become increasingly difficult for agricultural employers to use in recent years because of administrative actions and external interference that have unnecessarily complicated the program and intimidated many prospective agricultural users. At present only about 20,000 of the approximately 70,000 H-2 labor certifications annually are for agricultural occupations. Difficulties in using the H-2 program have certainly been a factor contributing to the increased number of illegal aliens employed in agriculture in recent years.

As you know Mr. Chairman, from the very beginning of the debate on the control of illegal immigration in the United States, H-2 employers have maintained that effective control of illegal immigration would require continuing and improving the H-2 program if it were not to have a traumatic effect on U.S. agriculture. We have advocated statutory and regulatory provisions that would assure agricultural employers quick and certain access to sufficient seasonal labor to meet shortages of U.S. workers at wages and working conditions that are fair and reasonable to U.S. workers similarly employed.

The H-2 temporary alien worker provisions of S1200 are the result of years of discussion, debate and compromise. S1200 does not include everything H-2 employers have wanted and have advocated. Additional critical issues will have to be addressed in the regulatory process. We do feel however, that S1200 reaffirms the intent of Congress to provide agricultural employers facing a domestic labor shortage with one means of obtaining seasonal workers. It provides workable parameters within which such a program can meet the needs of H-2 employers and protect H-2 employees.

S1200 expands the statutory language on temporary agricultural workers from a few sentences in the current Immigration and Naturalization Act to many pages. However it is important to note, Mr. Chairman, that actual changes made in the current program are few. We feel that codification of these provisions in S1200 is needed to assure that the H-2 program will continue to be available and viable for agricultural employers and to assure that those who are charged with administering the program do so in a manner that will continue to allow it to function as it was intended to do by Congress.

There are two important changes in the temporary worker provisions of S1200 which we would respectfully recommend. The first relates to our concern about employers' responsibility for workers who move around the country seeking H-2 employment under the provisions of the proposed Section 216(f)(3). As the H-2 program currently operates, H-2 workers can remain in the U.S. for brief periods if the worker has a job promised by an eligible employer at the time he completes a contract. When this occurs the worker, the releasing and the receiving employer, and the INS all have knowledge of the worker's initial employment location and the location of the next job opportunity. The first employer is responsible for the worker until the day this responsibility is transferred to the subsequent employer. Mr. Chairman, should it be the intent of the Committee to allow workers freedom to travel around the country at will seeking another certified job after the completion of an H-2 work contract, it is imperative that the legislation specifically exempt the releasing employer from responsibility for the worker once the worker has completed employment and exempt the receiving employer from responsibility for the worker until the worker starts the new employment. Otherwise the releasing employer could be held responsible for the workers (including the payment of liquidated damages or forfeiture of a bond) during a time when no employer knows the whereabouts of the worker nor has any control over the worker's movements nor knowledge of his intentions.

Our second concern is with Section 124 of S1200, the Commission on Agricultural Worker Programs. The agricultural H-2 program has been studied by numerous commissions and legislative panels. On several occasions over the past four years this immigration sub-committee under your chairmanship has done an outstanding job of hearing the issues on the subject. Your counterpart in the House has done the same. Mr. Chairman, we have full faith in the current congressional oversight system. We feel strongly that subsequent problems that may develop can and should be taken up through the existing oversight procedure rather than through another commission set up specifically to study agricultural worker programs.

We feel the commission is unnecessary. However Mr. Chairman, if you and the Congress deem the commission a necessity, let me respectfully point out that fewer than one-third of current H-2 admissions are in agriculture. Additionally, the Justice Department has stated publicly that less than 20 percent of the illegals in the U.S. today work in agriculture. Both under current regulations and your proposed legislation the admission of agricultural workers for temporary employment is singled out for more restrictive, burdensome and costly government controls than admissions for non-agricultural temporary or even permanent employment. Non-agricultural employers need only to conform to prevailing wages and practices in the occupation and conduct a local job search. There is no such thing as a non-agricultural adverse effect wage rate, three-quarter guarantee, paid transportation, free housing, etc. which agricultural employers are required to provide. The H-2 Coalition feels strongly that the commission has been set up to study the wrong program. But if a commission is to be mandated, such a commission should also study non-agricultural temporary worker programs since this is the area where most of the current H-2 workers and most of the illegal alien workers are located and where most of the problems will probably occur if use of illegal workers is curtailed.

Mr. Chairman, the H-2 program as modified by your proposed legislation will make the H-2 program more workable without displacing U.S. workers, lowering wages and job standards, and contributing to unemployment. The wages and working conditions required for participation in the H-2 program at least equal and usually exceed prevailing practice. Our studies indicate that the presence of the H-2 program has raised domestic agricultural wages and employment standards in those areas where it is used. This program is essential to the livelihood of the U.S. farmers who use it, and to U.S. workers on those farms and in allied businesses. This program is necessary to save U.S. workers' jobs.

Mr. Chairman, we note that the temporary agricultural worker provisions of S1200 closely parallel the corresponding provisions of the conference committee compromise temporary agricultural worker program agreed to by House and Senate conferees last fall. With this statement we are filing a detailed report which explains each major provision of last fall's compromise temporary worker program, the reason it is needed, and responds to criticisms of it. It addresses many points which I have not addressed today but which are essential for a full understanding of the purpose and importance of the provisions you have proposed. We commend it to the subcommittee and to all those concerned with the H-2 temporary agricultural worker program.

We have come a long way over the past few years in debate and compromise and we thank you for your very intense interest and consideration in the process.

Senator **Simpson**. Thank you very much.

Now, Mr. Tuddenham, sir.

Mr. **Tuddenham**. Thank you, Mr. Chairman. My name is Edward Tuddenham, and I am a consulting attorney with the Farmworker Justice Fund, a Washington, DC based nonprofit advocacy program that works on behalf of farmworkers, both United States and foreign.

For the past 8 years, I have been involved in litigating employment cases for U.S. farm workers and for H-2 farmworkers and have become all too familiar with the problems that exist with the foreign labor program.

On behalf of the Farmworker Justice Fund, I would urge this committee to eliminate the guest worker provisions in S. 1200, for those provisions will spell disaster for the U.S. farmworkers. By steamlining the process by which foreign workers are brought into this country, it is quite predictable that there will be a vast increase in the nmber of foreign workers that will come in under the provisions of S. 1200, yet S. 1200 contains no provisions whatsoever that will in any way offset the adverse effects of this new influx of foreign workers on the U.S. work force.

To the contrary, S. 1200 actually weakens the protections that exist under the current H-2 law and also creates numerous new barriers to the employment of U.S. workers. The net result of these changes will be that U.S. workers will be eliminated from jobs that they currently hold and will be replaced by foreign workers.

In my written statement I have detailed each of the provisions of S. 1200 relating to guestworkers and how they will have this effect, but let me just focus on two. The first of these is the change in the purpose of the program which will eliminate the need for interstate recruitment by employers prior to obtaining foreign workers.

Under the current law, foreign workers cannot be obtained unless the grower is able to show that U.S. workers cannot be found in this country. Now, that language has been interpreted in the regulations to require interstate recruitment prior to bringing in foreign workers. Under S. 1200 the purpose of the program will be changed and the definitional language will read that foreign workers will be able to be brought in if U.S. workers will not be available at the time and place needed. Now, this change from available in the country to "available at the time and place needed" can only be read to eliminate the need for interstate recruitment. The test now is simply whether there are enough workers in the local area.

Agriculture traditionally has relied on migrant streams. We know that most of the workers employed in agriculture are not employed from the local area. Those migrants who have traditionally come interstate to an area will now no longer have to be notified of their right to apply for jobs prior to the application and importation of foreign workers.

It is interesting to note that this new operative language that U.S. workers will not be available at the time and place needed is exactly the same definition that was used to define when workers could be brought in under the long-discredited bracero program. That language spelled disaster for U.S. workers in the 1950's and early 1960's and there is no reason to think that it will not have the same effect now.

A further change that S. 1200 brings in the current H-2 Program which will make it difficult for U.S. migrants to compete for jobs is the elimination of the 50-percent rule. Under current law, an employer who imports foreign workers is required to continue hiring U.S. migrants up through 50 percent of the contract period.

S. 1200 will eliminate this provision and states only that the U.S. employer need continue hiring U.S. workers until the day his foreign workers depart for the United States. Given transportation problems and things like this, this will normally be several days before the harvest even begins. That means that any U.S. worker who shows up 1 day after—it may even be a few days before the harvest has begun—has automatically been locked out of that job because the foreign workers have already started coming to the United States.

Virtually all of the U.S. workers who are currently obtaining employment with H-2 employers will be locked out by this provision because they do not arrive several days before the harvest begins. The traditional migrant stream brings workers into an area over a several week period. As crops and the harvest begin to slow down in an area further south, they move north in increasing numbers as the harvest picks up further north.

The 50-percent rule under current law has protected these workers' right to apply for jobs as they come into the area, even after the harvest has begun. With the elimination of that rule these workers will no longer be able to apply for jobs and will have effectively been eliminated from the work force.

S. 1200 not only makes it harder for U.S. workers to apply for jobs, but also will cause a deterioration of working conditions. Let me touch briefly on just two examples of that. The housing provisions under current law, employers must offer free housing to all workers before they can import foreign labor. Under S. 1200, employers are allowed to substitute an allowance for housing if housing is available in the area. In other words, they shift the burden of finding the housing from themselves to the workers.

This provision is going to lead to a deterioration of the housing requirement, for two reasons. One, it creates an administrative nightmare. Who is going to determine whether housing is available in an area? Just because there is a 20-percent vacancy rate in a town's housing stock does not mean that that housing is available for short-term occupancy, does not mean that landlords will rent to migrant farm workers, does not mean that migrant farm workers will have the rent deposit necessary to obtain the housing even if the rent subsidy is enough to pay the rent.

The only way that this provision could work is through extensive study to determine whether housing is available, and even then there is no guarantee that workers will in fact use the money to buy decent housing. Farm workers are low wage workers, they will pocket money you give them to augment their income and they will end up sleeping in their cars.

The one occasion I know where an allowance for housing was used in Texas, H-2 workers took the allowance and actually ended up sleeping in caves. We cannot tolerate that. We must be firm in keeping the housing provision in as it is in current law.

Senator **Simpson**. I would appreciate it if you could——

Mr. **Tuddenham**. I talk about that in my written statement and I thank you very much.

[The prepared statement of Mr. Tuddenham follows:]

PREPARED STATEMENT OF EDWARD J. TUDDENHAM

My name is Edward Tuddenham. I am a consulting attorney with the Farmworker Justice Fund, Inc., a Washington, D.C. based legal action and advocacy organization founded in 1981. For the past eight years I have been actively involved in litigation on behalf of domestic and H-2 farm workers in Texas, Florida, Virginia and other states and have become quite familiar with the problems associated with foreign worker programs.

The Farmworker Justice Fund believes that the guestworker provisions of S.1200 should be eliminated from the bill for their enactment will mean disaster for domestic farmworkers. By streamlining the process for importing foreign workers, S.1200 will lead to a vast expansion of the number of foreign guest workers admitted to the country each year. Yet, S.1200 contains no provisions whatsoever to protect U.S. farmworkers from the effects of this influx of foreign workers. To the contrary, S.1200 weakens the protections of current law, and erects new barriers to the employment of U.S. workers. The net result of these changes will be the displacement of thousands of U.S. farm workers from their jobs and their replacement by legalized foreign workers.

A. S.1200 Will Displace U.S. Farm Workers

Any changes in the H-2 program which will increase use of guestworkers will have an adverse effect on U.S. farm workers. However, two provisions of S.1200 will be particularly destructive for U.S. workers: the elimination of interstate recruitment and the repeal of the 50% rule.

S.1200 changes the definitional structure of the H-2 program. Under current law H-2 workers may only be imported if available U.S. workers "cannot be found in this country." 8 U.S.C. §1101(a)(15)(H)(ii). This language has been interpreted to require employers to engage in interstate recruitment of U.S. farm workers before turning to a foreign labor supply. S.1200 would change the definitional structure of the law to allow the importation of foreign workers whenever U.S. workers, "will not be available at the time and place needed." This language is identical to the definitional language used in the long discredited Bracero program. Its adoption will eliminate the interstate recruitment requirement and place the burden on U.S. farmworkers to show that they will be available at the time and place needed. This had disastrous results during the Bracero program and will have similar results now. Interstate recruitment is a vital mechanism for informing U.S. workers of available jobs and becomes even more important as the use of foreign workers expands. The elimination of the requirement of interstate recruitment will mean that many U.S. workers will never hear of available jobs and never be afforded an opportunity to compete for them.

This change in the definitional language will have another negative effect on U.S. workers. The proposed definitional change substantially narrows the statutory preference for the hiring of U.S. workers and thereby provides a legal basis for rewriting the DOL regulations which implement that preference. Such rewriting will necessarily result in a similar narrowing of the regulatory protections for U.S. workers.

S.1200 also makes it harder for U.S. workers to compete for jobs by eliminating what is commonly called the 50% Rule. Under current law employers are required to hire qualified U.S. workers who apply for jobs anytime during the first 50% of the job contract for which foreign workers are imported. S.1200 will eliminate this rule and instead guarantee U.S. workers jobs only until a farmers' foreign workers depart for the U.S. Because of travel time for foreign workers, this will generally be several days before the harvest begins. Domestic workers who arrive even one day after the harvest begins will be locked out of the job. Unfortunately, this includes many if not most of the U.S. workers now hired by H-2 employers. U.S. workers following traditional migrant streams rarely arrive in a crop area before the harvest begins. Rather, workers flow into an area over a period of time as the harvest in that area picks up and the harvest further south comes to an end. The 50% rule assures that these U.S. migrants will be able to obtain jobs when they arrive in a crop area. Under S.1200, these workers will not be hired and workers who currently find work in H-2 crops will effectively have been eliminated from the work force in favor of foreign workers.

Moreover, employers who prefer foreign workers can use this provision to all but eliminate the possibility of having to hire U.S. workers by simply requesting their foreign workers be admitted a few days before U.S. migrants traditionally arrive in the area.

Other provisions of S.1200 create similar barriers to the employment of U.S. workers. The problem is that any bill which makes access to foreign workers easier, as this one does, will necessarily tempt growers to avoid hiring U.S. workers whenever possible. This is not because employers are anti-American. It is a matter of simple economics. This bill, like the H-2 program, allows a grower to select which foreign workers will receive visas. With this power the employer can cull through the vast number of unemployed workers in the Caribbean and Mexico to select only the most capable, elite workers. An employer cannot be selective with U.S. workers; by law all qualified U.S. workers must be offered jobs. As a result growers prefer hiring foreign workers over U.S. workers. This is not to say that foreign workers are superior to U.S. workers; only that a highly selected work force will always be preferable to an unselected workforce. Given this economic incentive for growers to prefer foreign workers and the barriers which S.1200 creates for the employment of U.S. workers, the inevitable result of the passage of this bill will be the displacement of more and more U.S. farmworkers from their jobs.

B. S.1200 will Adversely Affect U.S. Working Conditions

In addition to eliminating jobs for U.S. workers, S.1200 will act to depress current U.S. work standards.

For example, the bill proposes to eliminate the requirement in current law that housing be provided by employers who import foreign workers. Safe and sanitary housing is a vital protection for U.S. and foreign workers. It has been required in every guestworker program since the inception of the Bracero program in the 1940s. Yet S.1200 would eliminate this guarantee and allow employers to substitute a cash allowance in lieu of housing. To be sure the amendment would only permit this allowance to be paid if housing is available in the job area. But this proviso will do nothing to prevent the deterioration of housing standards.

In the first place, the proviso creates an administrative nightmare. A recent housing study conducted by the FmHA concluded that housing in rural areas was scarce and generally substandard. In many areas landlords are unwilling to rent to migrant farmworkers because of the short duration of the tenancy, or, they require large security deposits which the workers will be unable to afford. Given these facts, for the proviso to be effective someone will have to conduct extensive housing and rent determination surveys each time an employer seeks to import foreign workers. Who will pay for these expensive surveys? One wonders if suitable housing is truly available at affordable prices why the employer doesn't just rent it and avoid the need for all of these surveys. One cannot help but feel that this amendment has been proposed because growers know they can't find suitable housing.

Even if these administrative problems could be resolved, there is no guarantee that a housing allowance will be used for housing. Farm workers are at the lowest end of the wage scale. All too often workers will, by choice or necessity, save their housing allowance to augment their meagre income and up sleep in substandard housing or in their cars. The one occasion I know of where DOL authorized housing allowances to be given to H-2 workers, some H-2 workers ended up sleeping in caves.

These results pose serious health and sanitation problems not only for the workers involved but for the community as well. There was a reason why the housing requirement was incorporated in the H-2 program: we cannot tolerate having either U.S. or foreign farm workers living in unhealthy and unsanitary conditions. Yet this bill will lead directly to that result.

The bill's provisions on associations provides another example of how worker protections will be weakened by making it impossible to enforce protections. S.1200 would allow the farmer members of an association to avoid responsibility for violations of the guestworker program committed by their association - at least as long as the farmer had no knowledge of the violation. In other words, a farmer can enjoy all of the benefits of having an association apply for his workers, but avoid all responsibility for the association's actions as long as he remains ignorant of the details. Not only does this reward the cultivation of ignorance by farmers, but it turns agency law on its head. The common law has always held a principal liable for the actions of his agent and joint employers jointly liable for their employment practices. Every other employer in America must operate under these common law principals. There is no excuse for creating a special exemption for agriculture. If farmers are going to operate through associations and derive the benefit of acting together, then it is hardly unreasonable to expect them to take some responsibility for assuring that their associations act within the requirements of the law. A further problem with exempting farmers from liability for their association's actions is that associations rarely have assets to pay for their violations.

C. Conclusion

These are only a few of the ways in which the guestworker provisions of S.1200 will harm U.S. workers. There are many others, which I have not addressed here because of time restraints. They are included in the longer statement which I request be included in the record.

FJF opposes adoption of the guestworker provisions of S.1200. Those provisions should be eliminated from the bill. Current law is adequate for the needs of agricultural employers.

Senator SIMPSON. I thank you very much. I regret that we do have that limitation.

Now, Reverend Alvarez, please.

Reverend ALVAREZ. Mr. Chairman, Senator Simpson, I am the Rev. Msgr. Salvador Alvarez, a Roman Catholic deacon and national executive secretary of a national Hispianic organization called Los PADRES. We are an association of Hispanic priests, deacons and brothers which has been instrumental in working with the Apolstalic delegate in the United States from the Vatican in naming 14 Hispanic bishops and 2 Hispanic archbishops. We are now in support of the appointment of a Mexican-American cardinal in the United States.

Our association was formed in 1969 as a civil rights organization in response to school walkouts of Mexican-American students in San Antonio, Los Angeles, Denver, and other parts of the country, and in response to the farmworker movement, led by Caesar Chavez, who sought church support for the grape boycott. Archbishop Flores of San Antonio today is a founder of our association, Los PADRES, went to California to lend public support to the United Farm Workers, along side Senator Bobby Kennedy, Senator Edward Kennedy, and Senator Mondale.

Because of this long history of our support for the United Farm Workers, it is an honor for me to be representing both Los PADRES and the United Farm Workers of America, AFL-CIO today.

Prior to being appointed to my position in PADRES, I was the legislative representative of the United Farm Workers between 1976-82 in Sacramento, CA, and in 1984 represented the UFW here in Washington, DC, in the battle to defeat the Simpson-Mazzoli immigration reform package.

I served on the National Platform Committee of the Democratic Party, working very closely with Congresswoman Geraldine Ferraro and wrote the language with Congressman Roybal of the platform opposing sanctions, and ID card and guest worker programs. I was involved in the Senate-House committee deliberations representing both PADRES and the USW, along side Dolores Huerta, the first vice president of the union. We were obviously in strong opposition to the Panetta-Morrison amendment which would reestablish a national bracero program that is being called for this afternoon by these grower representatives.

We were shocked that a Democratic controlled U.S. House of Representatives passed the bracero program in the form of the form of the Panetta-Morrison amendment. This case a shadow of shame on the Democratic Party. However, we were assured by House leadership that the bracero program would be taken out in the conference committee. This assurance came directly to us from key House leadership, including Representatives Mazzoli, Rodino, Pepper and others. This commitment occurred principally because the AFL-CIO, a powerful ally of ours and we are affiliated within that organization, withdrew its support of the bill just prior to the vote in the House, and the threat of withdrawal from the U.S. Catholic Conference, if such removal of the Panetta amendment was not made by the conference committee.

Mr. Chairman, we understand that the conference committee came through with a compromise which is still a bracero program. Your bill still carries with it the 72-hour provision which is what the growers really want. They are asking for all of the things in Panetta-Morrison but basically your bill essentially provides this country with the reestablishment of a bracero program.

Let me turn now to the conclusions of my prepared remarks which I hope will be entered into the record.

Senator SIMPSON. Without objection.

Reverend ALVAREZ. Let me go to the summary and say that the key to our testimony is that we really believe that the foreign guestworker program in your bill is directed to provide a death blow to the United Farm Workers of America, AFL-CIO by the Republican Party.

This document that I present to you goes through the history of Republican Party attempts to destroy our union, namely going back to the period when Governor Reagan of California attempted to literally destroy our union. All of his key figures who were involved in that attempt to destroy our union are now in the White House, including Mr. Ed Meese, including Mr. William French Smith, who was the Attorney General of this country.

Now, that is a well documented history that has taken place in California. Governor Reagan not only attempted to destroy our union through the use of the power of the Republican Party, but he brought in the Teamsters in 1970 in the lettuce fields and then in 1973 the Teamsters were brought in to make sweetheart contracts, as we are all aware, between the grape growers that are well represented here today, and the Teamsters Union.

This is a blatant attempt, Mr. Chairman, on your part and the part of the Republican Party to provide a weapon to destroy the United Farm Workers of America. We have a President that is anti-union and we are very aware of the power of the White House in its anti-union activities—witness the air traffic controller strike.

Let me just say that having been a university professor for 8 years in the University of California, as well as San Jose State University, and having studied as a doctoral student the history of farm labor, let me say that it is very well documented particularly by Dr. Ernesto Galarza, that the Republican Party has always been at the forefront at trying to prevent farmworkers from unionizing in this country.

And it was the Republican Party, with the alliance of rural Democrats that kept farmworkers from being included in the National Labor Relations Act of 1935. It is no more complicated than that. We have a Republican President in the White House who, while he was in California, tried to destroy our union, and he has 3 years left to do it. Let us see what happens, Mr. Chairman. Thank you.

[The prepared statement of Reverend Alvarez follows:]

PREPARED STATEMENT OF REV. SALVADOR E. ALVAREZ

It is an honor for me to address this U.S. Senate Subcommittee on Immigration and Refugee Policy of the Senate Committee on the Judiciary in Washington D.C., June 17, 1985. Distinguished Senators Simpson, Kennedy, Simon, Grassley and Denton, I am Reverend Mr. Salvador E. Alvarez, a Roman Catholic deacon and National Executive Secretary of Los P.A.D.R.E.S. Inc., the National Association of Hispanic priests, deacons, and brothers, which has been instrumental in working with the Apostolate Delegate to the United States from the Vatican in the naming of fourteen Hispanic bishops and two Hispanic Archbishops. We are now in support of the appointment of a Mexican-American cardinal. Our association was formed in 1969 as a civil rights organization in response to school walk-outs of Mexican-American students in San Antonio, Los Angeles, Denver, etc., and the Farmworker Movement lead by Cesar Chavez, who sought church support for the grape boycott. Archbishop Flores of San Antonio, a founder of Los PADRES, went to California to lend public support of the United Farm Workers, along side Senators Bobby Kennedy, Senator Edward Kennedy, and Senator Mondale.

Because of this long history of our support for the United Farm Workers, it is an honor to be representing Los PADRES and the United Farm Workers of America, AFL-CIO. Prior to being appointed to my position in PADRES, I was the legislative representative of the United Farm Workers between 1976-1982 in Sacramento, California, and in 1984 represented the UFW here in Washington, D.C. in the battle to defeat the Simpson-Mazzoli immigration reform package. I served on the National Democratic Platform Committee working very closely with Congresswoman Geraldine Ferraro and wrote the language, with Congressman Roybal, of the platform opposing sanctions, I.D. card, and guestworker programs. I was involved in the Senate-House Conference Committee deliberations representing both PADRES and the United Farm Workers along side Dolores Huerta, First-Vice President of the union. We were obviously in strong opposition to the Panetta-Morrison amendment which would re-establish a national bracero program.

We were shocked that a democratic controlled U.S. House of Representatives passed the Bracero Program. This cast a shadow of shame on the Democratic Party. However, we were assured by House leadership that the Bracero Program would be taken out in Conference. This assurance came directly to us from Key House leadership including Rep. Mazzoli, Rep. Rodino, Rep. Pepper and others. This commitment occurred principally because the AFL-CIO withdrew its support of the bill, opposing passage by the House of a Bracero Program just before the House voted, and the threat of withdrawal by the U.S. Catholic Conference, if such removal of the Panetta Amendment was not made by the Conference Committee.

Support for the Panetta Bracero Program (P workers) stemmed principally from the special interest of the Western growers and the Republican Administration of the state of California. These powerful forces proposed to re-establish a massive guestworker program of the magnitude of the Bracero Program Congress established in early 1940's. By 1960, this program was opposed by the Kennedy Administration and finally terminated by the Johnson Administration because of the leadership of Cesar Chavez who was the President of the National Farm Workers Association in 1962, Tom Donahue from the AFL-CIO, Msgr. George Higgins from the U.S. Catholic Conference, Hispanic organizations, and notibly Dr. Ernesto Galarza, a former farm labor organizer who became a social science researcher documenting extensively the exploitation of braceros by the agribusiness industry in the United States. I joined in the struggle to end the Bracero program (Public Law 78), in San Jose, California while the president of the Social Service Union, Local 535, which was established in 1963. Subsequently, I studied the history of the Bracero program as a doctoral candidate at the University of California, Berkeley.

Termination of the Bracero Program in 1964 lead to the historic strike of farmworkers in Delano, California, 1965 and the grape boycott that ensued between 1966-1970. The United Farm Workers emerged as an extension of the civil rights movement of the 1960's. This fledging union garnered support of over 17 million Americans, who boycotted grapes, according to the Gallop polls. In 1970, grape growers signed three year contracts with the UFW despite the opposition of Governor Ronald Reagan to the unionization of farm workers.

Immediately upon the signing of contracts in Delano, the Reagan Administration in California, the growers, and the Republican Party invited the Teamsters Union into the fields of Salinas. The growers signed "sweetheart" contracts in 1970 with lettuce growers and in 1973 with the grape growers. These events were followed by the New York Times which wrote a blistering story about how the UFW was dead. University professors began writing articles on how the UFW helped set the stage for Teamster dominance in the fields. But not for long. In 1975 newly elected Democratic Governor Jerry Brown signed into law the nation's best labor law, the Agricultural Labor Relations Act of 1975 agreed to by Democrats, Republicans and growers to end consumer boycotts. This law called for elections to settle the jurisdictional dispute between the Teamsters and the UFW. Roman Catholic Bishop Roger Mahony was named Chairman of the Agricultural Labor Relations Board (ALRB). Elections were held and over 90% were won by the UFW. Once again, the UFW regained a powerful negotiating position and between 1975-1982, the UFW membership was over 100,000 members under contract.

However, as expected, when Republican Governor Dukemejian was elected, he appointed a former Republican Assemblyman to General Counsel of the ALRA. Mr. David Stirling has subsequently made fair elections in the fields impossible. As a result of the alliance of Republicans, agribusiness and rural Democrats, there emerged, during the 1984 election year, the Bracero Program as an amendment in the House of Representatives. The Possibility of crushing the unionization of farm workers in California existed with Reagan in the White House and a Republican controlled Senate. All that was needed was passage by the House democrats. It followed that if Rep. Mazzoli and the press could keep the focus of immigration reform on sanctions and legalization then the possibility of passage existed. The press cooperated and kept the focus of Hispanics on sanctions without a real focus on what President Reagan wanted, Braceros and another dead union: First, the air traffic controllers, now, the leading civil rights spokesman of the Hispanic community of the nation, Cesar Chavez.

However, friends of the United Farm Workers in the U.S. Catholic Conference and Mr. Donahue, within the AFL-CIO insisted they would oppose the entire bill if guestworkers remained. The UFW's powerful allies maintained that guestworkers should not be the subject of immigration reform.

Early in the new session of this Congress, the Republican Administration brought together the INS, Department of Agriculture and the Department of Labor to propose the enabling of a Bracero Program by changing the Regulations for H2 workers so as to allow immediate importation of Braceros for "perishable crops in California." After all the growers had streamlined large amounts of political funds to both Rural Democrats and Republicans in 1984 without result. The decision to battle for Braceros on two fronts was made: Sen. Simpson's measure before us today S.1200, the Immigration Reform and Control Act of 1985, and the regulatory process. This, two pronged, strategy is an indication that the Reagan allies, agribusiness and the Teamsters are worrisome inasmuch as their strategy failed in 1984. The over-riding assumption was made, notibly, that if immigration reform was called for in the context of high unemployment or growing poverty (9 million more Americans below poverty line) then all the major editorial papers of the East Coast in particular, the New York Times, the Baltimore Sun, Washington Post, etc, would press adamantly for immigration reform in order to stop or slow the rate of illegal immigration and therefore provide more employment for Americans who were falling into poverty. This placed the blame for increased poverty in the U.S. on Mexico, and Mexico responded strongly by opposing the Simpson-Mazzoli Bill.

Moreover, racism is playing a part in the formulation of S1200 inasmuch as the Republicans and rural Democrats favor a labor program of Mexican workers without having to legalize them; they favor a weak legalization program; they favor an I.D. card; and they favor sanctions which would result in blatant discrimination against Mexican workers.

TRANSITION PROGRAM

The most blatant tactic of this racist strategy toward the importations of Mexican workers is to provide in this Simpson bill a transition program of workers in the fields without sanctions against growers who fire pro-union workers. This transition program gives license to growers to place on the legalization list entirely new workers at low wages while replacing workers who have 5-10-15 years of seniority. There are no protections for workers. The legalization criteria, in S. 1200, that sanctions must be demonstrated as workable before legalization is triggered is outrageously discriminatory. S. 1200, literally, is a measure to re- establish a bracero program for the Western growers who helped elect Mr. Reagan, Governor of California for 8 years and who contributed substantially to his re-election campaign in 1984.

REPUBLICAN CAMPAIGN STRATEGY FOR 1986

More important, this bill is designed to protect Republican Senators as they prepare for their re-election campaign for 1986 by weakening legalization and strengthening guestworker provisions. Senators can vote for immigration reform. The lesson of the Texas Senatoral race was: Don't legalize Mexicans. Then if the Democrat House passes a liberal legalization program, the 1986 campaign issue is clear. Democrats favor illegals while Republicans say they place severe conditions on legalization. Not a bad strategy to set up the Senate and House democrats for a campaign year knowing that the Texas Senatorial race in 1984 clearly demonstrated a liberal legalization program was not popular with voters.

GUEST WORKERS BY REGULATION

It appears that the bill S1200 will be a real money maker for the National Republican Campaign Committee of the Senate. When the Senate votes overwhelming for this bill, it will put pressure on the administration to press harder for changes growers want and feel they can expect by regulation. It is a no lose proposition for this historic alliance of powerful forces in America that kept farm workers from gaining coverage under the NLRA in 1935. It is a perpetuation of institutional racism and exploition of Mexican workers in America without legalization. Is it a small wonder there is no Mexican-American Senator in America? The history of the Mexican worker's struggle to become unionized is well documented And, members of the United Farm Workers are todays heroes.

GRAPE BOYCOTT RENEWED

The United Farm Workers will continue to lead this struggle, with its renewal of the grape boycott, and its appeal to the fairness of the American people and those abroad. Justice will prevail because when light is shed on the truth, and people see injustice, they do respond. It is our belief that if the press focused the nation's attention on how this bill would create greater exploitation of guest workers than there already is under the current H2 program, Senators would indeed be asked to vote against S. 1200 on the Senate floor. However, it was our experience last year that the Eastern press deliberately avoided making mention of the horrendous guestworker provisions until our friends in the AFL-CIO and Church spoke out against these provisions.

We are not surprised that the New York Times and agribusiness' allies in the Senate remain silent in exposing a slave market system called guestworkers. The Times write epitaphs about the death of the United Farm Workers or make charges that Cesar Chavez is wrong when he fires union employees who betray the workers, when he fights Teamsters in the fields or the National Right To Work Committee that pays workers' legal fees to fight unionization because they have been promised employment and benefits if they fight the U.F.W. or join the Teamsters.

The most recent example of inept Teamster activity in the Salinas Valley is when the Teamsters called for an election among over 900 workers at Hansen Farms only 33 workers voted for the Teamsters, while 414 voted for the UFW and 393 for no unions. I went into the fields on June 11, 1985 representing PADRES, to talk with workers. The growers had fired pro-union workers and threatened that the company would close and everyone would lose their jobs. The UFW lost that election and the no-union vote won. The Republican Governor's staff, charged with investigating unfair labor practices will investigate the firings and threats. We know that the no-union election vote will be upheld by the Republican Administration, while we file appeals.

Our spirits are high because we are back to Boycotting Grapes and making a direct appeal to the American people to obtain justice in the fields. Si Se Puede Como Siempre!

Attached to the exhibit are articles from the Salinas Californian that document Teamster involvement, and the struggle between Republicans and democrats in the state legislature. While we understand that Democrats in the U.S. Senate are outnumbered, we are confident our friends will fight against this bill and vote against it on the Senate Floor.

PADRES asks that the press end the systematic attacks on the United Farm Workers. The union is an instrument of peace acknowledged as such by Protestant, Catholic Churches and Jewish American Synagogues, including the World Council of Churches and the Vatican.

SUMMARY

We continue to oppose sanctions because we believe enforcement will be discriminatory and targeted toward Hispanics.

The Legalization program is totally non-acceptable, particularly because it can only be triggered by a sanctions commission which we oppose.

And, most important we understand the foreign guestworker program is directed to provide a death blow to the United Farm Workers of America, AFL-CIO, by the Republican Party. The Reagan Administration in California and in Washington has consistently sought to destroy the union of farmworkers. The President believes he can succeed. As provided for in S1200, the bill:

..........allows for the importation of guestworkers within a 72 hour period.

..........undermines the unionization of farmworkers.

..........creates higher unemployment of domestic workers.

..........perpetuates exploitation of farm workers because of lower labor standards.

..........encourages production standards based upon a system of speed-ups by a young male labor force.

These provisions of the proposal are provided within new "N" nonimmigrant classification for Temporary Agricultural workers. Section 101(a)(15)(8 U.S. C. 1101 (a).

Further, the proposed "Transition program" creates the worse possible situation in which employers can fire pro-union employees with many years of seniority in favor of guestworkers who will vote for non-union status during ALRA elections, as was the case last week at Hansen Farms in Salinas, California. In a letter to his employees, he stresses voting for no-union:

> Dear Hansen Farm Employee: . . .VEGCO can only succeed with your support. In the coming days, I would like to talk with and to hear your ideas about how we can improve the company. Unfortunately, I cannot do this if the UFW wins Thursday's election. A union victory would mean that the company can communicate only with the union. That would be a shame, because history shows that the UFW has no interest in keeping companies alive. After all, the UFW will survive whether or not VEGCO goes out of business. But for all of us, a successful VEGCO is our only security. . VOTE NO UNION.

Finally, can anyone believe that we even need guestworkers with 9 million more people below poverty, with high unemployment in cities and with farm worker unemployment so high that in many areas of Florida, Texas, California, the rural economy is described as being in a depression.

Simply stated gentlemen, we oppose the Simpson bill because it will allow for a massive importation of guestworkers. The effect would be for the Senate to cater to the special interests of the Western growers and those in the White House. Let no one say that the Republican party is not dominated by special interests of the rich against the poor. S.1200 pits the powerful against the weak.

As the representative of a national catholic organization, Los PADRES, let me say that if social justice is to be served, then S.1200 as drafted is a morally unjust piece of legislation which must be opposed even more strongly because it is worse than the Simpson bill introduced in the previous congressional session. Thank you for the opportunity to express our views of this critical piece of legislation.

Mr. Alvarez was formerly Western Regional Director, Bishops' Committee for Spanish Speaking, U.S. Catholic Conference, 1968-69; formerly an Assistant Professor at the University of California, Santa Cruz, an Associate Professor at San Jose State University between 1970-1976; author of Legal and Legislative Struggle of Farm Workers 1965-1972; Member National Farm Worker Ministry Board, former member of NFWM Staff; former member National Conference of Social Welfare; Lobbyist for the United Farmworkers 1976-1984; Doctoral Candidate, Social Welfare, UC Berkeley 1975; M.S.W., UC Berkeley, 1967; Vice-President of National Association of Hispanic Deacons; Council of Churches of Santa Clara County Board of Directors.

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May 30, 1985

Chavez to launch strikes, boycotts

By VIC POLLARD
Gannett State Bureau

SACRAMENTO — Faced with stiffening resistance to unionization by growers, farm labor leader Cesar Chavez says his union will revive its '60s-style grape boycott and strikes this summer

The goal, Chavez said Wednesday, is to force California's table grape growers to allow workers to hold union representation elections without unfair interference from employers

Chavez outlined the plans after a hearing in which Democratic and Republican state officials sparred with each other in the latest round of the debate over whether California's farm labor agency is biased for or against farmworkers

The hearing was called to discuss a study of the agency's performance by state Auditor General Thomas Hayes. He said he concluded that there was no basis to long-standing charges by growers that the Agricultural Labor Relations Board has discriminated against them

But the hearing by the Democratic-controlled Joint Legislative Audit Committee failed to quell the controversy surrounding the agency. There is bitter controversy between supporters of the five-member board, still dominated by appointees of former Democratic Gov. Jerry Brown, and General Counsel David Stirling, named by GOP Gov. George Deukmejian

Chavez told reporters later that Stirling is a major reason that the United Farm Workers Union is cranking up its grape boycott. He said Stirling is blatantly pro-grower and is dismissing most of the unfair labor practice complaints filed by farmworkers against employers

"The fact is that the (state farm labor) law is not working," Chavez said. "There is not one farm worker who believes it is working."

He said the union will soon have grape boycotts in 10 major cities across the United States and Canada. They include Los Angeles, San Francisco, New York, Chicago, Philadelphia, Toronto and Montreal, he said

The union is already boycotting some stores which sell Red Coach lettuce in a dispute with a major grower. Instead of the traditional pickets, it is using a sophisticated computerized direct-mail operation urging Hispanics and other sympathetic consumers not to shop at certain stores

Chavez said the grape boycott will be in full swing in about two weeks and strikes against grape growers will follow later in the summer

"At that point, when the public is aware of the boycott, we will strike to call more attention to the boycott," he said.

The reason for the new militancy, he said, is that grape growers and other agricultural employers feel that they can violate the state Agricultural Labor Relations Act and Stirling will not prosecute them. He said growers frequently halt union organizing drives by "selective" firing of union representatives as soon as the drives begin, even though the tactic is illegal under the law

"The boycott does not come off until the growers do two things," Chavez said. "They must sign an agreement that workers will have access to free elections without getting fired. And if we win an election, they agree to bargain in good faith with us."

Meanwhile, Hayes said his review of the agency's work since its founding in 1975 failed to show any evidence of bias for or against either growers or farm workers

"We didn't find any thing in those case files or any other evidence that there has been any intentional bias on either side," he told the committee. He acknowledged that the study was too limited to examine the political motives of the board and the general counsel, but he said the record of court appeals of ALRB decisions could provide an objective appraisal of whether the agency is enforcing the law

And he said the agency's decisions have held up well in court. Of 153 cases appealed, the board's decisions were upheld in 119 cases, modified and upheld in 19, and reversed in just 15 cases.

Nevertheless, Stirling found himself on the defensive against charges from some Democratic legislators that he is dragging his feet in enforcing the farm labor law

Hayes said his audit report showed a sharp increase in the number of unfair labor practice charges against growers that have been dismissed by Stirling since he became general counsel in 1983. There has been corresponding decrease in the number of charges which resulted in complaints prosecuted by Stirling, Hayes said

The change has been most dramatic in the last nine months, he said. A total of 728 charges were filed by workers or unions against growers, during the period. Meanwhile, 524 charges were dismissed and 115 were prosecuted as complaints. Another 44 charges were withdrawn and 45 were settled

By contrast, 894 charges were filed in the last full fiscal year of the Brown administration, with 359 dismissed and 353 prosecuted as complaints

By contrast, Hayes said, the number of charges by growers or workers against the UFW and other unions that have been dismissed or prosecuted have remained relatively constant. Rarely are more than 100 cases a year filed against labor organizations

Wednesday, May 8, 1985 *Salinas Californian*

Row over labor benefits erupts

SACRAMENTO (AP) — Democrats are accusing Gov. George Deukmejian's chief farm labor lawyer of delaying benefits to farm workers, and are threatening to halt his salary.

They did it Tuesday in a heated, name-calling confrontation before an Assembly Ways and Means subcommittee on the state budget.

The lawyer, David Stirling, denied any foot-dragging, but committee members said they would strike his $68,000 salary from the fiscal 1985-86 state budget if he doesn't speed up unfair labor practice settlements.

Stirling is Republican Deukmejian's appointee as general counsel of the Agricultural Labor Relations Board.

He said in an interview after the hearing that he expected Deukmejian to reject the demands by subcommittee members to increase the ALRB staff.

Speaking of the subcommittee's ploy, Stirling said, "I'm not overwhelmed by it, and I don't think the governor plays that game. I wouldn't expect he would be moved to increase the budget of the agency" because of the threat against his, Stirling's, salary.

There has been nearly a year of relative calm — at least in public — between Stirling and the board majority appointed by Democratic former Gov. Jerry Brown.

All four Democrats on the seven-member subcommittee, which oversees the ALRB's $8 million annual budget, attacked Stirling's record of collecting benefits for farm workers who have won ALRB judgements against growers.

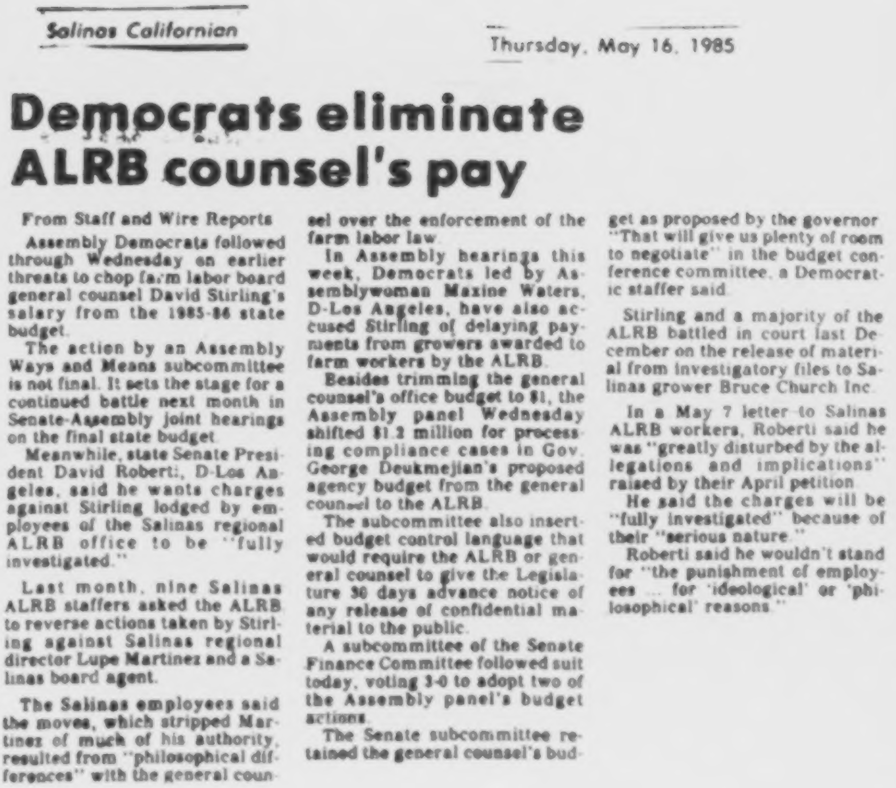
Democratic Floor Leader Mike Roos of Los Angeles said, "You are not upholding the law and are painfully, painfully stringing people out. It is disgraceful. There is a lot of foot-dragging because the individual who is in charge of the law doesn't believe in it. If you don't follow the law, you ought to resign."

Said Democratic Caucus Chairwoman Maxine Waters, also of Los Angeles, "We have ways to force something to happen .... My first alternative is to strike your salary from the budget until a new general counsel is appointed who will carry out the law. The governor can blue pencil (veto), but he can't put it back."

ALRB board member Jerome Waldie, a Brown appointee who has clashed repeatedly with Stirling, told the subcommittee that "we have no confidence in the general counsel (Stirling).

"He has denied access to the farm worker. Now he is seeking by delay to deny payday to farm workers who are aggrieved" and have won judgements from the board and courts, Waldie said.

Stirling denied the accusations, and later accused Waldie and the United Farm Workers of torpedoing a bipartisan agreement on a $100,000 budget increase to speed up the processing of worker claims.



Salinas Californian

Thursday, May 16, 1985

Democrats eliminate ALRB counsel's pay

From Staff and Wire Reports

Assembly Democrats followed through Wednesday on earlier threats to chop farm labor board general counsel David Stirling's salary from the 1985-86 state budget.

The action by an Assembly Ways and Means subcommittee is not final. It sets the stage for a continued battle next month in Senate-Assembly joint hearings on the final state budget.

Meanwhile, state Senate President David Roberti, D-Los Angeles, said he wants charges against Stirling lodged by employees of the Salinas regional ALRB office to be "fully investigated."

Last month, nine Salinas ALRB staffers asked the ALRB to reverse actions taken by Stirling against Salinas regional director Lupe Martinez and a Salinas board agent.

The Salinas employees said the moves, which stripped Martinez of much of his authority, resulted from "philosophical differences" with the general counsel over the enforcement of the farm labor law.

In Assembly hearings this week, Democrats led by Assemblywoman Maxine Waters, D-Los Angeles, have also accused Stirling of delaying payments from growers awarded to farm workers by the ALRB.

Besides trimming the general counsel's office budget to $1, the Assembly panel Wednesday shifted $1.2 million for processing compliance cases in Gov. George Deukmejian's proposed agency budget from the general counsel to the ALRB.

The subcommittee also inserted budget control language that would require the ALRB or general counsel to give the Legislature 30 days advance notice of any release of confidential material to the public.

A subcommittee of the Senate Finance Committee followed suit today, voting 3-0 to adopt two of the Assembly panel's budget actions.

The Senate subcommittee retained the general counsel's budget as proposed by the governor. "That will give us plenty of room to negotiate" in the budget conference committee, a Democratic staffer said.

Stirling and a majority of the ALRB battled in court last December on the release of material from investigatory files to Salinas grower Bruce Church Inc.

In a May 7 letter to Salinas ALRB workers, Roberti said he was "greatly disturbed by the allegations and implications" raised by their April petition.

He said the charges will be "fully investigated" because of their "serious nature."

Roberti said he wouldn't stand for "the punishment of employees ... for 'ideological' or 'philosophical' reasons."

Salinas Californian — Wednesday, June 5, 1985

Nine Salinas ALRB workers file charge against Stirling

By VIC POLLARD
Gannett State Bureau

SACRAMENTO — Nine employees of the Agricultural Labor Relations Board's Salinas office today accused General Counsel David Stirling of denouncing them as "a bunch of socialists" and illegally threatening to fire them.

The employees, including the regional director in charge of the Salinas office, said Stirling's action came after the nine workers filed a petition in April protesting his handling of disciplinary actions.

However, the accusation was immediately denied by Stirling and by Clark Bennett, the ALRB's chief of administration. Bennett was quoted by the employees as the source of their information that Stirling had called them socialists and threatened to fire them.

The workers filed a formal charge with the state Public Employment Relations Board accusing Stirling of an unfair labor practice under the state's Employer-Employee Relations Act.

"Immediately after reading the (April) petition, Stirling told Chief of Administration Clark Bennett that he wanted to fire all of the employees who signed the petition," the nine workers said in a document filed with PERB.

"At the same time," the document added, "Stirling denounced these employees as 'a bunch of socialists.'"

Stirling flatly denied that he had threatened to fire the employees or called them socialists and said the workers were engaging in a campaign to discredit him politically. The Legislature, where Stirling has many critics among the majority Democrats, is currently considering the agency's budget.

"It's purely a political publicity game that's going on, and I'm not going to play," Stirling said.

Stirling's version was backed up by Bennett, who said he never heard Stirling say the things attributed to him in the PERB charge.

"That's absolutely not true," he said. "I don't think this unfair labor practice charge is going to go very far if that's what they are depending on."

The incident is the latest development in a long-running battle between Stirling, appointed two years ago by Republican Gov. George Deukmejian, and many employees of the ALRB around the state. Stirling accuses many of the employees, most of whom were hired while former Democratic Gov. Jerry Brown was in office, of being biased in favor of the United Farm Workers Union. Many of the employees charge that Stirling is pro-grower and is dragging his feet on enforcement of the state farm labor law.

The April petition, whose signers included Salinas Regional Director Lupe Martinez, protested what it said were improper disciplinary actions by Stirling against Martinez and another employee in the Salinas office.

Earlier this year, Stirling stripped Martinez of all of his authority to prosecute unfair farm labor practice charges on behalf of the general counsel's office. That left him with little but his authority to supervise farmworker union representation elections on behalf of the five-member Agricultural Labor Relations Board.

The petition alleged that Stirling took the action because of "philosophical differences" between him and Martinez.

VEGCO

POST OFFICE BOX 4487 SALINAS CALIFORNIA 93912

June 7, 1985

Dear Hansen Farms Employee:

I'm writing this letter to introduce myself and to give you good news. I'm Fernando Cespedes, Vice President of Agriculture at VEGCO. The good news is found in the enclosed letter, offering you a job at VEGCO.

There has been a lot of concern that VEGCO's foremen and supervisors will hire their friends and relatives, and discriminate against others. VEGCO will not tolerate any favoritism. You have been hired because of your seniority and that seniority will be recognized in the future.

I know that you are concerned about seniority and may have questions about your seniority. VEGCO is bringing in a new personnel director, Tom Selim. Tom speaks excellent spanish, and has experience in administering seniority systems. He will start on Saturday, June 8, and will report to me. If you feel that your seniority is wrong, Tom will be at the VEGCO trailer to talk with you and answer your questions. If we have made a mistake about your seniority, Tom will have the authority to correct it. At any time in the future, when workers have any complaints, they can bring them to Tom.

This is a time of decision for you, your fellow workers, and for VEGCO itself. You've heard all about the election, so let me instead talk with you about the future of VEGCO.

As Hansen Farms closes down, VEGCO has two choices: to close down business, or to try to make it work. We're going to try to make it work, but we need your support.

VEGCO can only succeed with your support. In the coming days, I would like to talk with you and to hear your ideas about how we can improve the company. Unfortunately, I cannot do this if the UFW wins Thursday's election. A union victory would mean that the company can communicate only with the union. That would be a shame, because history shows that the UFW has no interest in keeping companies alive. After all, the UFW will survive whether or not VEGCO goes out of business. But for all of us, a successful VEGCO is our only security.

Sincerely,

Fernando Cespedes
Vice President - Agriculture

- VOTE NO UNION -

Salinas Californian — Monday, May 13, 1985

Ag unions try to organize Hansen Farms

By LARRY PARSONS
Californian Staff Writer

In the first major action on the Salinas Valley farm labor front in 1985, the United Farm Workers and Teamsters unions have drawn a bead on Hansen Farms — a firm slated to go out of business in a month

Union representatives say their organizing efforts were spurred by fears among Hansen workers about what will happen when the company goes out of business.

"We were approached by a number of workers asking us to go out there," said UFW row crops manager Arturo Mendoza. "They are concerned about what is going to happen to their jobs."

"Everybody wants a job. There's a lot of people out of work in this Valley," said Teamsters business agent Pete Maturino.

Hansen Farms owner Al Hansen told his workers in March that the company would cease farming as of June 15.

Last week, the UFW and Teamsters Local 890 of Salinas received employee lists covering about 900 Hansen Farms workers after filing notices of intent to organize with the Agricultural Labor Relations Board. To obtain the lists, the unions turned in union authorization cards signed by at least 10 percent of the company's workforce.

The notices filed with the ALRB named both Hansen Farms and CCHF Inc., a wholly owned subsidiary of Castle & Cooke Inc., which formed a joint farming deal with Hansen Farms in February 1984.

Despite the announced closure of Hansen Farms and dissolution of its CCHF partnership, union officials say they suspect Castle & Cooke will be involved in the farming operations after June 15.

"We feel it will exist ... with changed names," Maturino said. "We won't find out until June 16, but we're not waiting around to find out."

"All of the land is being cultivated," said Mendoza. "(The workers) know jobs are going to be out there."

Neither union has filed for a representation election.

"So far we've gotten good response but we're not in position to file right away for an election," Mendoza said today.

"We hope to get an election going," Maturino said Friday. "Right now, we're just going out and talking with the people."

Andrew Church, a Salinas lawyer for Hansen Farms, said today there has been "no change" in the firm's intent to stop farming in mid June.

Regarding the union moves, Church said, "It seems kind of foolish. (If they win) they get bargaining rights to bargain with a company no longer in the farming business.

"We were quite surprised they would do it at Hansen Farms," he said. "If anything is to be done, it should be after June 15."

A CCHF representative was unavailable for comment.

According to regional ALRB officials, CCHF has objected to being jointly named with Hansen Farms on the organizing notices filed by the unions with the farm labor board.

The "unit clarification" issue would be investigated should either or both unions file for an election, ALRB regional attorney Norm Sato said.

Salinas Californian Wednesday, May 29, 1985

Teamsters say they'll try again for Hansen Farms vote

After coming up short, Teamsters Union officials said they will file more union authorization cards today with the state farm labor board for an election at Hansen Farms.

An election petition filed by Teamsters Union Local 890 of Salinas was dismissed Saturday by regional Agricultural Labor Relations Board officials because the union failed to get enough cards signed by Hansen workers to call the election.

Teamsters business agent Pete Maturino said today that the union fell about 40 cards short of the required majority. He said the Teamsters planned to file another petition today.

If accepted by the ALRB, the petition would set up an election by next Wednesday.

Both the Teamsters and United Farm Workers union are mounting organizing drives among field workers at Hansen Farms, the major row crop firm slated to go out of business as of June 15.

At stake are about 900 farm workers employed by the company.

The Teamsters' first election petition named Hansen Farms and CCHF Inc., a subsidiary of Castle & Cooke, as joint employers.

Before the petition was dismissed for insufficient cards, the ALRB rejected an appeal by CCHF to delay the election until after June 15.

Maturino said the company is currently running radio advertisments on Spanish-language stations urging workers to reject both the Teamsters and UFW.

Maturino said he expected no problems with gathering enough additional cards for an election.

Salinas Californian
Thursday, May 23, 1985

Teamsters ask for election at Hansen Farms

By LARRY PARSONS
Californian Staff Writer

The Teamsters union has formally asked the state farm labor board for an election at Hansen Farms, the major Salinas farming firm slated to quit business next month

Officials from Teamsters Local 890 filed a petition Wednesday afternoon with the Salinas regional Agricultural Labor Relations Board that calls for an election within a week

ALRB agents said they expect the United Farm Workers union to follow suit by asking to be placed on the ballot with the Teamsters if an election is called

Both unions have conducted recent organizing drives among Hansen field workers that union officials say were prompted by the company's March announcement that it would go out of business on June 16

UFW officials were unavailable for comment today

If an election is held, it would be one of the biggest farm worker elections in recent years in the

UNION See Back Page

Union

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(Continued from page 1)

Salinas Valley and the largest faceoff between the Teamsters and UFW since the Teamsters resumed field organizing last year

Hansen Farms listed about 900 field workers on recent employee lists turned over to the unions

Teamster business agent Pete Matarino said union organizers received 515 authorization cards signed by Hansen workers

Under ALRB rules, a union needs signed cards from a majority of a company's workers to demontrate a "showing of interest" for an election

ALRB regional director Lupe Martinez said ALRB agents will determine by Friday afternoon whether the Teamsters collected enough cards for an election

In a novel twist, ALRB agents said the Teamsters' petition was the first they knew of for an election at a company scheduled to quit business

Both Teamster and UFW officials, however, maintain that Hansen's farming operations will continue under the management of CCHF Inc., a subsidiary of Castle & Cooke Inc

Castle & Cooke is the parent company of Bud Antle Inc., the nation's largest lettuce shipper. Last year, CCHF and Hansen Farms formed a joint farming deal

"(CCHF) will be around," said senior Teamster business agent Roy Mendoza. "They're exchanging equipment stuff like that"

Andrew Church, Hansen Farms lawyer, said: "Our position is that the petition was filed for CCHF (doing business as) Hansen Farms. Whether there is such an entity, it's certainly different than Hansen Farms which is a sole propietorship"

A CCHF representative was unavailable for comment

"After Hansen goes out, we'll know the whole story," Mendoza said. "If we win, we can tie it all together at that time. If we lose, they are going to go ahead and do what they want anyway"

Martinez said the arrangement between CCHF and Hansen Farms "is going to be a significant issue"

The so-called "unit clarification" issue may be resolved after an election because the state's farm labor rules "favor" conducting an election "if all other things are equal," Martinez said

Clouding the already murky picture are reports that CCHF officials have asked Hansen workers to go to work after June 15 for a CCHF-affiliated firm called VegCo

"(CCHF) has indicated they would ask Hansen's people to work for them," Martinez said

Maturino said the Teamsters have filed an unfair labor practice charge that alleges Hansen workers received recent letters from the company warning them they would lose potential jobs, presumably with VegCo, if they signed union cards

Church said: "Anybody can file an unfair labor practice charge on whatever theory they want. It's a common union tactic"

Hansen Farms, one of the largest farming firms in the Salinas Valley, has operated recently in the Salinas, Watsonville, Huron and Blythe areas, Mendoza said

Saturday, May 25, 1985 Salinas Californian

Board won't stop Hansen election

By LARRY PARSONS
Californian Staff Writer

The state farm labor board Friday refused to dismiss a Teamsters Union petition for an election among field workers at Hansen Farms.

The election, which would cover about 900 farm workers, is tentatively scheduled next Thursday.

On Friday, members of the Agricultural Labor Relations Board refused to put the brakes on the election process by rejecting an appeal filed by CCHF Inc.

CCHF Inc., a subsidiary of Castle & Cooke Inc. and farming partner of Hansen Farms, asked the ALRB to toss out an election petition filed this week by Teamsters Union Local 890.

In a telegram to the board, CCHF lawyer John Cooke contended the election should be put off until after June 15, the day Hansen Farms is slated to cease operations.

Instead, the board directed ALRB regional director Lupe Martinez, who had earlier declined to halt the election, to go ahead with the balloting.

Martinez said Friday the location and procedures for the balloting will be ironed out at a pre-election conference on Tuesday.

Both the Teamsters and United Farm Workers union have mounted recent organizing drives among Hansen workers. Union officials said the campaigns stemmed from Hansen workers' fears about their jobs after the company closes.

According to documents on file with the ALRB, CCHF apparently plans to hire at least some of Hansen's work force.

In its response to the Teamsters' petition, CCHF said it will not have agricultural employees until after June 16.

At present, CCHF's lawyer said, Hansen Farms "has exclusive control" over labor relations. Contentions by the unions that the two firms are "joint employers" are "confusing the issues" for the workers, Cooke said in the telegram to the ALRB.

"The election should be held after June 16 when CCHF becomes an agricultural employer," he said.

Cooke also argued that the election should be blocked by pending charges filed last year by the Teamsters that Hansen Farms workers should be part of the union's Bud Antle Inc. bargaining unit.

Bud Antle, a subsidiary of Castle & Cooke, has about 2,500 field workers under Teamster contracts.

ALRB officials expect the UFW to intervene in the election, but the union had not made such a move by late Friday.

Other unions may petition to be on the ballot up till 24 hours before an election, Martinez said.

Saturday, June 1, 1985 *Salinas Californian*

Hansen election gets go-ahead

State farm labor board officials Friday gave the go-ahead to a union election among more than 900 field workers at Hansen Farms of Salinas.

A pre-election conference to hammer out the location and procedures for the balloting is set for Monday afternoon, said Lupe Martinez, regional director of the Agricultural Labor Relations Board.

ALRB agents Friday afternoon completed a painstaking check of union authorization cards submitted by Teamsters Union Local 890. Martinez said the Teamsters had collected enough cards — a majority of Hansen's current field force of 915 workers — to force an election.

A few hours later, United Farm Workers union organizers filed to intervene in the election. UFW crops manager Arturo Mendoza said the union had collected cards from 582 Hansen workers.

A union has to turn in cards from at least 20 percent of a company's workforce to intervene in an election.

Martinez said ALRB agents would work today to determine if the UFW collected enough cards to join the Teamsters on the ballot.

Both unions have mounted organizing drives in the wake of Hansen Farms' announced intention to go out of business on June 15.

Union organizers contend Hansen's farming operations will simply continue under the management of Castle & Cooke Inc.

The UFW's intervention petition lists Hansen Farms, Castle & Cooke, and two Castle & Cooke subsidiaries, CCHF Inc. and VegCo., as joint employers.

Mendoza said Castle & Cooke officials have been promising to hire Hansen workers after June 15.

Salinas Californian Tuesday, June 4, 1985

Hansen workers to vote on union representation

By LARRY PARSONS
Californian Staff Writer

Ten days before their employer is slated to cease business, farm workers at Hansen Farms will vote Wednesday on whether they want union representation.

The election pits the United Farm Workers Union against the Teamsters Union with more than 300 potential union members at stake.

And with Hansen Farms, a major Salinas row crop company, scheduled to go out of business June 15, the balloting will be one of the oddest elections ever conducted by the state farm labor board.

At a three-hour pre-election conference Monday, Agricultural Labor Relations Board agents established the election sites and times.

The balloting, which will involve Hansen Farms workers from King City to Watsonville, will be conducted at three sites.

The majority of the workers are scheduled to vote at the company's Home Ranch off Old Stage Road before going to work.

Both the Teamsters and UFW have mounted major organizing drives among Hansen workers. Union organizers said the campaigns were spurred by concerns among the field workers over the future of their jobs.

The election petitions filed by the unions name both Hansen Farms and CCHF Inc., a subsidiary of the giant farming company Castle & Cooke Inc., as joint employers.

Both companies have protested the joint employer designation.

On Monday, CCHF filed a second petition to block the election. The company contends it shouldn't be a party to the balloting because it won't be an agricultural employer until June 16.

The state farm labor board earlier turned down a similar CCHF request to delay the election.

Another Castle & Cooke subsidiary, Vegco, is slated to take over Hansen Farms' farming operations on June 16.

Castle & Cooke officials have promised Hansen Farms workers that they will be first in line for jobs with Vegco.

According to documents filed with the ALRB, Vegco "will be hiring workers under similar, but not identical, terms and conditions and that certain operations of Hansen's would not be taken over."

During a break in Monday's meeting, Vegco manager Bud Holmquist said he couldn't estimate how many Hansen Farms workers stand to get jobs after June 15. He said "almost all" of the workers have filed job applications with Vegco.

Castle & Cooke lawyer John Cook said it was "absolutely nuts" for the ALRB to proceed with the election because of a welter of legal issues raised by the Hansen Farms closure and Vegco takeover.

"There's a lot of issues that still need to be settled," he said. Cook said he expected lengthy post-election litigation.

UFW officials said union president Cesar Chavez is scheduled to speak to Hansen workers at a 7 p.m. meeting today at Sherwood Elementary School.

The election marks the biggest face-off between the Teamsters and UFW since the mid-1970s.

While generally calm, Monday's pre-election conference was punctuated by barbed comments alluding to the high stakes of Wednesday's election.

As union representatives and lawyers for Hansen Farms and Castle & Cooke reviewed employee lists to be used to determine who can vote, Cook said: "Let the record show I'm passing it on since we have no (farm) employees."

Arturo Mendoza, UFW crops manager, shot back, "You sure are spending a lot of money for not having any employees."

At one point in the meeting, ALRB agents suggested that Teamster and UFW officials take 10 minutes to work out a compromise on proposed election sites.

"The only thing we can cooperate on is that we want an election," said Teamster business agent Pete Maturino.

ALRB agents said the ballots will be counted beginning at 5 p.m. Wednesday at the ALRB's Boronda Road office.

Salinas Californian Wednesday, June 5, 1985

CLAY PETERSON/Californian

Campaigning for UFW

United Farm Workers union president Cesar Chavez urged about 350 farm workers at Sherwood Elementary School Tuesday night to vote for the UFW in an election at Hansen Farms today. Some 900 Hansen Farms workers began casting ballots at 4:30 a.m. today to decide whether they will be represented by the UFW, Teamsters Union or no union. Half the workers voted by 8:30 a.m. State farm labor agents said the election was proceeding in an "orderly" fashion. The ballots were to be counted this afternoon.

Salinas Californian Thursday, June 6, 1985

UFW clings to lead in Hansen ag vote

By LARRY PARSONS
Californian Staff Writer

Workers at Hansen Farms gave the United Farm Workers Union a narrow lead in a three-way election held Wednesday.

Of 921 workers who went to polls in Salinas, King City and Watsonville, 414 voted to be represented by the UFW.

Another 397 workers cast ballots against union representation.

The Teamsters Union, which had kicked off union organizing drives at the Salinas-based row crop company, was the big loser in the tally.

Only 22 Hansen workers cast ballots for Teamsters representation.

"It's a victory," said UFW crops manager Arturo Mendoza after state farm labor board agents completed a two-hour ballot tally. "You see who got the most votes."

"They ran a good campaign," said Roy Mendoza, senior business agent with Teamsters Union Local 890 of Salinas. "There at the end they put out of a lot of slick propaganda.

"If it can't go Teamsters, then let it go UFW," Mendoza said.

But the election results remain in doubt at least until next Tuesday when Agricultural Labor Relations Board officials are scheduled to decide how many of 73 challenged ballots will be added to the count.

Those challenged ballots could

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(Continued from page 1)

reverse the UFW's fortunes or force a run-off election, if neither the UFW or no-union side wins a majority.

A run-off election would be held June 13, ALRB agents said.

The election was one of the largest farm worker representation elections held in the Salinas Valley for several years.

ALRB agents from Delano, El Centro and Fresno assisted Salinas-based agents in conducting the balloting.

In an odd twist, the election involved workers at a company that intends to close its doors in nine days. In March, Hansen Farms owner Al Hansen disclosed plans to cease farming operations on June 15.

Another firm, Vegco, a subsidiary of Castle & Cooke Inc., the Hawaii-based food product and real estate conglomerate, is slated to take over much of Hansen's operations on June 16.

Union officials contended that Hansen Farms and Castle & Cooke were joint employers. And that issue is almost certain to be raised in company post-election objections if the UFW triumphs.

Castle & Cooke asked the ALRB twice to delay Wednesday's balloting until after June 15, arguing that Vegco wasn't yet an employer.

At the same time, the company ran an advertising campaign on local Spanish-language radio stations urging Hansen Farms workers to reject the unions.

Joe Sanchez, a labor consultant for Castle & Cooke, predicted the no-union campaign would prevail in a run-off election with the UFW.

"We'll make it next time," he said. "We didn't campaign as we should have."

If the UFW wins, Sanchez said the issue of whether Vegco and Hansen Farms are, in effect, the same farming company will lead to lengthy litigation.

"Attorneys are going to retire on this," Sanchez said.

"We're not going to let it get tied up," responded the UFW's Mendoza. "If they try to tie it up, they will have to answer to the boycott."

To demonstrate the threat, several UFW officials and supporters at Wednesday's ballot count wore buttons resurrected from an earlier UFW boycott campaign against Castle & Cooke's Dole brand pineapples.

Mendoza said he was confident the UFW would win a run-off election.

"This is a long-time company, and we've only been out there talking to workers for a couple of weeks," he said.

Andrew Church, a Salinas lawyer for Hansen Farms, said the election was "a travesty" because of the confusion caused by the company's impending closure.

"We're still wondering who the employer is for the purpose of the election," he said.

Church said the vote tally showed that "union representation is not overwhelmingly what the people want."

Saturday, May 25, 1985 *Salinas Californian*

Refugee immigration policy hit

FRESNO (AP) — An Hispanic Catholic leader Friday criticized immigration quotas and political refugee policies of the Reagan administration that he claimed favor anti-communists at the expense of Hispanics.

The Rev. Ricardo Chavez made those charges at a news conference opening a three-day convention of Hispanic Catholics from 13 dioceses in California and Nevada. The conference was called to make recommendations for a national conference in August.

"The challenge is for the nation to accept the Hispanic people and allow them to be first-class citizens and not second-class citiens," said Chavez, director of Hispanic affairs for the California Catholic Conference.

Chavez noted that the United States has less stringent immigration standards for European refugees fleeing communist countries than for those coming from politicalsy friendly Latin American nations.

Each diocese presented 15 recommendations for the conference suggesting changes in church policies important to Hispanics. One diocese, for example, proposed asking the government to recognize political refugees from Latin American.

"We know for a fact that some of the people who go back there have been killed, have been made to suffer," Chavez said. "We need to recognize there is persecution."

Another diocese proposed support for the sanctuary movement protecting illegal aliens in the United States.

And another diocesan report charged that employers are unwilling to hire many Hispanics for more than minimum-wage jobs. The report recognized most job rejections were due to a lack of training and experience, "but few people give up the opportunity to attain it."

The church has made conscious improvements for Hispanics in parishes and in the hierarchy, Chavez said.

Bishop Joseph J. Madera of Fresno, who is hosting the conference, noted the church in the United States had "just one Hispanic bishop" in 1972, seven by 1977 and now has 16.

Friday, June 7, 1985 Salinas Californian

Business-

Nation's unemployment rate holds steady

WASHINGTON (AP) — The nation's civilian unemployment rate held at 7.3 percent in May for the fourth straight month, the longest stagnant period in at least 14 years, the Labor Department reported today.

Manufacturing employment fell by 28,000, the fifth straight monthly decline. Since the start of the year, some 163,000 manufacturing jobs have been lost.

But the economy overall created 345,000 jobs in May, with virtually all the gain in the services sector. Some 111,000 of those jobs were health- or business-related.

At the same time, the overall unemployment rate amoung young men, traditionally one of the strongest labor pools for manufacturing, was up. The jobless rate for those aged 20-24 rose 1.2 percentrage points to 12.5 percent.

And for teen-agers, the rate rose from 17.7 to 18.9 percent, due primarily to rising joblessness among college-age youths.

A Labor Department check of records going back to 1971 showed no period when unemployment had stayed the same for four months running. However, department analysts say there have been numerous times in that period when the labor picture has been relatively stagnant.

Indeed, civilian joblessness has been moving in the narrow range of 7.1 percent to 7.5 percent for the last year.

The number of unemployed Americans totaled 8.4 million in May, the level that has held since February.

Construction employment rose by 30,000 while the weakest segments of manufacturing, electrical equipment and clothing, fell by 24,000.

After 30 months of the economic recovery, manufacturing has regained only about 60 percent of the jobs lost during the 1981-82 recession, Janet L. Norwood, the commissioner of labor statistics, said in congresional testimony today.

In fact, employment levels in six industries are below what they were during the recession. Those industries are steel, tobacco, textiles, chemicals, leather and petroleum and coal.

The predominant job growth during the recovery has been in service industries, Ms. Norwood noted. "Since May of last year, nearly nine out of every 10 new jobs have been in that sector," she told the congressional Joint Economic Committee.

Today's report showed these unemployment rates for May:

- Adult men, 6.1 percent, down from 6.3 percent.
- Adult women, 6.9 percent, up from 6.8 percent.
- Teen-agers, 18.9 percent, up from 17.7 percent.
- Whites, 6.2 percent, down from 6.3 percent.
- Blacks, 15.6 percent, up from 15.3 percent.
- Hispanics, 10.7 percent, up from 10.3 percent.

An alternate unemployment rate, combining the 115.3 million-member civilian labor force with the roughly 1.7 million members of the armed forces stationed in the United States, also stayed the same, at 7.2 percent.

The civilian rate hit a post-Depression peak of 10.7 percent in November 1982, dropped to 7.2 percent in June, then went up before falling to 7.1 percent in November, the low point since the recession.

Some 11.9 million people were out of work when the rate hit that post-Depression peak.

In the 30 months of recovery through May, the number of jobless people has been cut by 3.5 million and the jobless rate has declined 3.4 percentage points.

In all, some 106.9 million civilians held jobs last month, a slight gain.

Senator SIMPSON. Thank you very much.

Now, some questions first of Mr. Voss. Groups such as the one you represent have spent some long and very hectic and interesting hours criticizing the current H-2 Program and the management of the program by the Department of Labor without influence from the Department of Agriculture. I think some of the H-2 Program in its present form is currently unworkable or unusable to some degree.

However, of those growers in the West who demand a Panetta-Morrison program—which is where it began in the rather stunning vote in the U.S. House of Representatives—only one citrus farmer in Arizona has even seriously attempted to use the existing H-2 Program. He does that and he has had a real scrap getting there.

How can claims that an H-2 Program will not work be believed by us when no one has tried to use it?

Mr. Voss. I think, Senator, we have had at least three to four that I can think of in recent years who have attempted to go through the hops and the process of doing so. They have——

Senator SIMPSON. Would you share their names for the record, please?

Mr. Voss. Jack Hopper, of Red Rock Farms, and I can get you the other names.

Senator SIMPSON. If you would.

Mr. Voss. I am quite familiar with the Hooper one.

Senator SIMPSON. It would be helpful. We really need to have that. I would appreciate it.

Mr. Voss. The difficulties they had in the mass of bureaucratic regulation was such that they have not progressed to the point that the people in Arizona have in the one case. I believe that Russ Williams of—I cannot think of the organization—Ag producers, has gone through many of the steps to move in that direction, although they have not come to a completion of the H-2 Program in California, but they were involved in the one in Arizona.

I think some of our people have tried. We have not been successful in seeing that it would meet the needs that we see we have in California.

Senator SIMPSON. The Panetta-Morrison program assumes that there is a large demand for temporary foreign workers and then creates the mechanism to provide those. Under this program, how is the U.S. worker protected and how is the flow of Panetta workers regulated?

Mr. Voss. Well, I think if you first take the assumption that a large segment of California, at least—and I speak for California, that is my only real knowledge—is an undocumented work force that presently competes with the domestic work force, that to whatever extent that that domestic work force is protected or unprotected today, Panetta-Morrison would go further in that the Attorney General in consultation with the Secretary of Labor and the Secretary of Agriculture, would determine to what degree supplemental work force would be allowed in and what the time period they would be allowed into the region or to the geographic bounds that they might put for supplemental labor.

So I think to whatever degree we have protection today, we increase that protection through the cooperation of those three agencies.

Senator SIMPSON. Let me share with you an interesting proposal of Congressman Chuck Schumer, of Brooklyn, one of my unique allies in this interesting effort—I get a mixed bag. I regret hearing the Reverend Mr. Alvarez speak about partisanship on this issue. I have not found a shred of it. You could not take the elements of immigration reform and put a partisan twist on that cue ball if you spent 40 days and nights doing it, so that is unfortunate indeed and I will come back and you can have tee-off time on me, I can promise you. But that is unfortunate. My good colleague Mazzoli is a Democrat, I am a Republican. Peter Rodino was most helpful. Speaker O'Neill, Chuck Schumer, Dan Lungren, Ham Fish, what a mixed bag of people, all interested in doing something about a situation which, at least thoughtful people think, is something that should be addressed by a nation, and that is control of its borders.

But Congressman Schumer, always looking for solutions and probing the issue, has proposed as an alternative to the agricultural labor program, that we might think of exempting growers from employer sanctions and increase the scope and enforcement of existing labor laws. It is not just a one-way street, it is an exemption of growers from employer sanctions and increasing the scope and enforcement of existing labor laws, and I would like to know how you react to such a proposal.

Mr. VOSS. I would react negatively, Senator. I would do that in that first of all I see with sanctions upon all other employer segments a zeroing in on agriculture by INS in enforcing their raids, if you will, and being in agriculture and having a crew at the peak of harvest with 50 or 60 people working and having had INS make their visits, the demoralization of the crew, whether or not there are any undocumented workers picked up that day, becomes quite an economic burden for agricultural employers to bear if that should be very frequent. And if that is the way we are going to enforce immigration, that is unacceptable to me also.

Senator SIMPSON. I think people are a little surprised sometimes. I do not think I have heard the figures vary that only between 8 percent and 15 percent of illegal undocumented persons in the United States are involved in agriculture. I have not heard anybody reject that scope, 8 to 15 percent, and I think that startles people sometimes. They think that their vision is of an agricultural person, you know, in the fields, and it is not so. It is a very interesting issue.

I am just going to ask one more question and then I am going to defer to Senator Simon who is going to ask some questions then maybe we will just bounce around. Let me ask a question of Reverend Alvarez. I was interested in your activities. At least I say you have been fair. You have trashed the Republicans and you have trashed the Democrats. I heard you do that.

I was interested in your activities in the Mondale-Ferraro campaign activity and I would assume then that you may have advised the vice presidential candidate to reject legalization. Were you her counsel on that?

Reverend ALVAREZ. Absolutely not.

Senator SIMPSON. Somebody did.

Reverend ALVAREZ. Absolutely not.

Senator SIMPSON. She did reject legalization and said that she would not do that. You are aware of that?

Reverend ALVAREZ. I cannot answer for her. All I know is that at the National Democratic Party it was clear to the Nation that Hispanics in the Democratic Party were not going to tolerate any further votes that would mean the passage of a bracero program. The passion on this issue among all national Hispanic organizations and among all the friends of United Farm Workers bodes very deep, in the Jewish, in the Catholic and the Protestant and the labor movement itself.

If you, Mr. Chairman, feel that you can get through the House, a Democratically controlled House of Representatives a bracero program of the magnitude of the Panetta-Morrison amendment, let me say to you that I know that we will retaliate the way we did in Sacramento when rural Democrats decided to take grower money and vote against us. Caesar Chavez went out and actively campaigned against Democratic candidates, namely Assemblyman Morey—all of these grower representatives are aware of that campaign and other campaigns to make the point that we are in the party, whether we are Catholic or Protestant or whatever it is, whether we are deacons or not deacons, we are in the party, and Hispanics, and we are not going to—whether I am a representative of the United Farm Workers or a private—I do not believe the climate in this country that we are not going to—we are just simply not going to tolerate within the party a vote that took place last year.

Senator SIMPSON. I know. It did take place——

Reverend ALVAREZ. It is totally not acceptable.

Senator SIMPSON. I know. It may be but it happens and it happened in the U.S. House of Representatives and it did not happen because of Democrats or Republicans. They were both involved in it, recognizing a need. It did not happen in the U.S. Senate, so there is no need to come back here to talk about it. It was never part of the bill when it left here, so I want to kind of keep the old score card, keep our eye on the rabbit kind of thing, it never came out of the U.S. Senate like that.

Let me tell you, I get thrashed by Republicans, so you know I happen to be a Republican, and they tell me, "Simpson, do you know what you are doing, you fool? You are going to legalize people and they will all register Democrat." So you see, I have been through it all. It really is not any review I need, but there is nothing in this issue that smacks of raw partisanship and if you try to inject it in there you will find in your own field that it will impugn your credibility. I can just share that with you, but you are welcome to rip around in it. I would not want to prevent you from doing that.

I want to ask you a question. You testified that here is a blatant attempt to destroy the United Farm Workers of America, and if you can, sir, answer me this, because I do not understand it. I really do not. Today we have a situation where hundreds of thousands of illegal, undocumented farmworkers enter the United States of America every year, hundreds of thousands. How can we provide protection for either the U.S. farmworker or the undocumented farmworker with the situation that exists today? Will somebody please tell me how that helps the U.S. citizen migrant farmworker or the authorized worker in the United States? Will somebody tell me in some reasonable way how that helps those people?

Reverend ALVAREZ. Mr. Chairman, the underlying assumption that has been made by social science researchers, university professors like Dr. Ernesto Galarza, in his research what he was able to document in the history of this country was that farmworkers could not be unionized under Public Law 78. There are volumes and volumes of works in university libraries that clearly state as their conclusion, including doctoral dissertations, that prior to the termination of the Bracero Program, it is literally impossible to unionize farm workers. And that is the overriding assumption that is in the literature.

Now, you are saying that having a guest worker program of the magnitude of Panetta-Morrison and all——

Senator SIMPSON. No; I am not saying that at all. I am saying how does the status quo help the American migrant farmworker. That is what I am saying, right to the nub.

Mr. TUDDENHAM. Could I speak to that? I think I can speak to that.

Senator SIMPSON. I would love to know how that is. I would love to know how that helps.

Mr. TUDDENHAM. There is a dramatic difference between an undocumented worker and a legalized guestworker. An undocumented worker, although he is afraid of immigration, is nevertheless a free economic actor. If he does not like working for this employer, he can quit, he can go work somewhere else. If he does not like the wages and his friends want to join him, they can go out on the picket line and he can picket at least until immigration shows up.

Senator SIMPSON. Are you talking about an undocumented worker?

Mr. TUDDENHAM. I am talking about undocumented workers, undocumented workers that I have represented who are among the strongest union supporters, much stronger than many of their domestic worker cohorts.

Senator SIMPSON. They are union members?

Mr. TUDDENHAM. They are undocumented union members in Texas. There is no contract there, but I have seen undocumented workers in unions in Texas walk out of the fields and demand higher wages because they know that they have the freedom to do that.

Senator SIMPSON. I agree, but——

Mr. TUDDENHAM. On the other hand, a legalized worker, I understand, cannot do that. He is tied to a particular employer, he is specifically selected by that employer to be a docile worker, to not complain too much. One agricultural association I am familiar with, when they go to Mexico to select H-2 workers, actually have as their first job qualification that you have never entered the United States as an undocumented worker, because they know that undocumented workers make trouble. They are aggressive people, they are self-selected; but growers do not want that. What they want are strong, young men from rural parts of Mexico who will keep their mouths shut. U.S. workers——

Senator SIMPSON. Well, are they not going to get those with the status quo as it is in the United States today, with the 1,200,000 people apprehended? I do not believe that. How can that possibly be?

Mr. TUDDENHAM. The status quo has U.S. farmworkers competing against undocumented workers who stand on relatively equal footing. Undocmented workers will join U.S. worker unions, as has been shown in Arizona and California, but an H-2 worker will never join a union because he cannot. He has been selected not to and comes in on a work contract that prevents it.

Senator SIMPSON. I know, but when——

Reverend ALVAREZ. Mr. Chairman, I——

Senator SIMPSON. May I just say how do you feel about exempting growers from employer sanctions then? How does that appeal to you?

Mr. TUDDENHAM. I would support that. What that does with the rest of the bill, I am not qualified to state, but I would support exempting employer sanctions.

Senator SIMPSON. I guess I do not say it well enough. I just say that the status quo, and no one seems to challenge it, is that 1,200,000 human beings have come into the United States and been apprehended as illegal, and let us say some of them go back and some stay there and we apprehend one out of two. How does that help the undocumented, the ones you indicate, or the U.S. American migrant worker. How is that helpful to him?

Reverend ALVAREZ. Mr. Chairman, I recently heard Caesar Chavez at the University of Santa Clara say that the solution is to provide for increased quotas so that those Mexican workers can come over here and work and stay. If they are needed, why should they not be able to stay? And his answer to this whole thing is that, yes, there has been a racist immigration policy in this country.

You were saying that you were disturbed by the word "racist." In my statement, I clearly point out that what you are proposing in your legislation is racist. I would not——

Senator SIMPSON. How clearly are you doing that?

Reverend ALVAREZ. I would not agree with you that Mr. Torres is the only one, and if he did not do it then I would gladly do it. The United States Catholic Conference has a big document on racism in the United States. A serious part of that racism has extended itself into immigration policy in this country. A serious part of that racism has extended itself in the fields.

I remember in 1968 talking to Monsignor Mahoney, who is now Bishop Mahoney, and when I was working for the United States Catholic Conference in 1968 I asked him, "Monsignor, here you are in Fresno, you talk to growers, what do they say?" "They say that they will not sign contracts, they will not sit across the table with their Mexican workers." And in 1970 they brought in the Teamsters and they were very clear about it, it is a lot easier for us to deal with white labor organizers than Mexican workers.

If you do not think there has been racism in the fields, then that is——

Senator **Simpson**. I did not say that.

Reverend **Alvarez** [continuing]. Then wherever you have been, you should go to California, Texas, Arizona, Florida, or anywhere else where racism is a sickness, is an illness in the fields.

Senator **Simpson**. I never said that, sir. I am saying that you bring it up and say that this legislation is racist.

Reverend **Alvarez**. Absolutely.

Senator **Simpson**. Well, that is your bag. Let us take a look at the fact that the bill and its provisions of employer sanctions and legalization and the H-2 Program applies equally to all nationalities. What do you think of that statement?

Reverend **Alvarez**. Well, I think it is pie in the sky.

Senator **Simpson**. Well, I knew you would.

Reverend **Alvarez**. OK. What I think is that when we——

Senator **Simpson**. But that is what it says.

Reverend **Alvarez** [continuing]. Are talking about a guest worker program, we are talking about these growers here wanting Mexican workers to come over on a temporary basis to be slaves in the field and sent back, and I say that is unjust, that is immoral.

Senator **Simpson**. Well, how about the 2 to 12 million that are already here and being used up, are you going to help us cleanup?

Reverend **Alvarez**. We are very concerned about that, Senator.

Senator **Simpson**. Who is?

Reverend **Alvarez**. We are very concerned about it, those of us in the churches and in the union.

Senator **Simpson**. Then why did you kill the bill then?

Reverend **Alvarez**. No, we buried——

Senator **Simpson**. Well, you did. You said you were very spirited in your killing the bill, and so you killed legalization for 2 to 12 million of your community.

Reverend **Alvarez**. When I talked to Representative Rodino, I said:

> Mr. Rodino, what we want in this country is fairness, we want an immigration quota that will allow us over here on this side of the border the same way that the Italians were allowed in and the same way the Polish were and the same way that Russians were allowed in.

In 1 year, a million Russians were allowed into this country. You look at the history of immigration for Mexican Americans, and it will take you many years before you could get 1 million legalized into this country, and that is what we are talking about.

Senator **Simpson**. Well, what I was——

Reverend **Alvarez**. This immigration bill does not attack the problem that we as Hispanics feel is the problem, and that is open up the quota for us in Latin America.

Senator **Simpson**. Would you share with me as to whether you believe that illegals who work in agriculture right now are not sometimes slaves in the fields?

Reverend **Alvarez**. Absolutely, and we call for as a union and those of us in the churches have said they should be given permanent status.

Senator **Simpson**. Well, why do you not join us in a solution then, instead of just raising hell? That would be helpful.

Reverend ALVAREZ. No; I am saying that to Mr. Roybal and I am saying it here, immigration policy should focus on changing the quota system.

Senator SIMPSON. Well, join us if——

Reverend ALVAREZ. A one-time legalization of Mexican workers is not the answer.

Senator SIMPSON. Well, as I say, I have been holding hearings now for about 6 years and when people cannot seem to deal with the issues they go to either fear, guilt, emotion, or racism. I have played all that game.

Reverend ALVAREZ. Why do you not open up the quotas, Senator?

Senator SIMPSON. I have played the whole game.

Reverend ALVAREZ. Why do you not open up the quotas to Latin America?

Senator SIMPSON. Well, I had that in mind in other legislation. We had that in mind, recognizing a special situation with our Mexican neighbors, however, we are not dealing with——

Reverend ALVAREZ. In the tune of 1 million, the way it was done for other groups?

Senator SIMPSON. We do the same we do with other groups, the whole spectrum. Do you want to go back through Central American policy just to trash the administration or whatever? I try to keep that out of the immigration debate, too. We do not need to get into that. Fifty-nine thousand Mexicans entered the country legally last year. That is more than any other country in the world.

Reverend ALVAREZ. That is my point, Senator. That is my point, how you compare that. You take any study of immigration quotas, and I do not care whether it is Italians or Poles or the Czechoslovakians or the Russians——

Senator SIMPSON. Well, you and I need to have a good visit. I would like that.

Reverend ALVAREZ [continuing]. And there was pressure in the country——

Senator SIMPSON. Let's you and I visit, how would you like to do that, chum, instead of just babbling into the airwaves at each other. Why do not you and I have a little appointment and talk about things? Because if you want to just come in and be incendiary, you do it. That is not the way I do my business, so I will visit with you and you and I will have a chat and talk about things that are of importance to you and to me, instead of just playing ping-pong. Eighty-five percent of the legal immigrants in this country last year were non-Europeans, so do not come in here and truck that load of stuff around in this chamber.

Reverend ALVAREZ. That is good campaign rhetoric, Senator.

Senator SIMPSON. You know, I try to use facts when everything else fails and it might be really a hell of a good thing to do. I am not trying to be rude or a dink with you, but if you want to come in here and just shoot it around the room, why, you have got the wrong chairman. And I would be very pleased and honored to sit with you and I am going to arrange that appointment and we will talk.

Now, you are up, Paul.

Senator SIMON. I thank you. I am glad I got on this noncontroversial subcommittee here, Mr. Chairman.

First, if I can just make a comment about the comments here way at the end. I think it is good as to approach this to try and find reasonable solutions, if we can find reasonable solutions, that we try to respect the motivation of others, and I respect the motivation of all of you who are on this panel.

I also respect the motivation of my colleague from Wyoming. And while there may be some discrimination that will result—and that is the reason for my opposing this legislation when it came up in the House—I never had any idea that the sponsors were racist in intent. I think all of us are trying to find sensible solutions and I think if we keep working at it, my instinct is we may be able to find some.

Let me first, if I may, just ask each of the five of you one question, and I only want a one-word answer, a "yes" or "no," just like I have to vote on the floor of the Senate. I cannot get up and explain my vote when the rollcall vote comes around. I can just vote "yes" or "no" or "present."

If this bill as it is right now, without any changes, were up, would you vote "yes" or "no?" And I will just go down the panel here.

Mr. Voss. I would have to vote "no."

Mr. **Durando**. No.

Mr. **Sorn**. Senator, if I may, the H-2 coalition—

Senator **Simon**. Well, I am going to restrict you to a yes or no.

Mr. **Sorn**. I could not tell you yes or no.

Senator **Simon**. OK. All right.

Senator **Simpson**. What do you think of that? That is the way it is.

Senator **Simon**. Well, if you could change the bill, modify it as you would like, would you vote "yes" or "no"?

Mr. **Tuddenham**. I would vote "yes."

Mr. **Sorn**. Yes. If I get to write it, yes.

Reverend **Alvarez**. You cannot change a bad bill.

Senator **Simon**. Well, I have been in this legislative process quite a few years and I have seen bills changed fairly dramatically. I am not saying that is going to be done.

Reverend **Alvarez**. Not this bill.

Senator **Simon**. Your answer is no, then?

Reverend **Alvarez**. No.

Senator **Simon**. OK.

Mr. Durando, I would be interested—I do not know if any of you were here before, but I am a brandnew member of this subcommittee and I am trying to learn. Mr. Durando, you made a suggestion that an increase in the wages withheld from the worker should be returned through the U.S. Consul upon the worker's return to the country of origin, upon showing proof of compliance with the program, this will help assure that the foreign workers return home.

I am just interested in the comments of the others of you to that suggestion. It probably has been made by others before, but I am just not aware of it. Mr. Voss?

Mr. Voss. Well, I support that because I think that in the Panetta-Morrison type of proposal, getting away from some of the problems of the bracero is that that employee is free to move within a geographical pool and to seek out his best employment and the highest wages of which the marketplace may pay him, as long as he be in the agriculture sector, and so he is left with some responsibility to get himself home, having 20 percent of his wages there waiting for him should be the incentive to do it, with a minimum amount of bureaucracy and enforcement upon the U.S. Government to be sure that he is departed upon whatever those terms of his visa allow him to come in on.

Senator SIMON. Mr. Sorn?

Mr. SORN. Senator, the current H-2 Program does have a provision where the workers, when they get back home, do have a savings account which they would draw upon. We have had no significant problems or major problems with abscondees under the H-2 Program.

Senator SIMON. Mr. Tuddenham?

Mr. TUDDENHAM. As Mr. Sorn says, I am aware of no problems with abscondees. I am not clear what your question was.

Senator SIMON. Well, the suggestion was that there be an increase in the wages withheld. Right now, what is withheld?

Mr. DURANDO. Senator, if I might respond to clarify, the provision you are speaking of is part of our seasonal agricultural worker proposal, similar to what Mr. Panetta and Mr. Morrison proposed, and it is an increase from the provision we had in last year's amendment, which at that time I believe was 7 or 8 percent of the wages would be withheld, and we are proposing in an attempt to address the concerns of those, some of these workers might not return home, they might go AWOL or into nonagricultral sectors. In our amendment we increased that to 20 percent, so it is still in the proposal stage. It has not been in use because we have no guestworker program yet.

Senator SIMON. There is nothing set aside right now?

Mr. DURANDO. That is correct, practically speaking. Workers who are coming into the western United States from Mexico come in for a number of months, work and as a matter of practice send a large percentage of their earnings home, usually through mail order or something like that, home being their family in Mexico. Of course, the money down there is worth much more and can buy a lot more.

It is not uncommon to have 50 percent or more of their wages sent home. They do it on their own anyway, to be put into savings accounts or to support their families and this type of thing. Keep in mind that these are in most cases illegal aliens.

So it is an attempt to utilize an existing system, legitimize it, legalize it, and use it to help carry out the intent of the overall immigration reform legislation.

Senator SIMON. Mr. Tuddenham?

Mr. TUDDENHAM. Senator, this is not an issue really for farmworkers. We are not concerned about abscondees because the employers have the ability to select the workers in their home countries, and when they select workers the workers they know are not going to abscond or ask questions.

The problem for U.S. workers is the fact that with these provisions in S. 1200, U.S. workers are never going to get the jobs in the first place. So the question of what happens to the worker after he leaves is really not going to be reached. The U.S. worker is bumped out of the marketplace from the very beginning.

The other thing I would note is in the proposal I understand that the proposal is to pay only the minimum wage, but to deduct 20 percent of that wage as the withholding. That would be, as I understand it, unlawful under current minimum wage law.

Senator SIMON. I do not think that is what is proposed, as I understand it, but I may not——

Mr. DURANDO. May I respond, Senator, just to clarify for you?

Senator SIMON. Yes.

Mr. DURANDO. In our proposal we do not propose to pay the minimum wage. Our proposal would require that an adverse effect wage rate be calculated which is a wage rate that assures that a level of pay is made to the worker, to the foreign worker that does not undercut the equivalent domestic worker.

Currently in California, for example, the minimum wage is $3.35 an hour. Practically speaking, for example, table grapes right now are paying $5.25 an hour, plus incentive pay, plus health benefits. Bakersfield is $5 an hour and Fresno is $4.85 in the fruit industry. In all probability, we expect that the adverse effect wage rate, although it has never been calculated for the west coast because we have not utilized the H-2 Program, but we do expect the AEWR to perhaps increase our wages, which is going to be an added cost in itself, and that will be far above the minimum wage, and then there would be 20 percent of that withheld and returned to the worker's home and the worker does get the money when he gets home, so we are not taking that money away from the worker forever. But that is part of our proposal versus—you know, I think we are looking at apples and oranges, our proposal and the existing H-2 Program.

Senator SIMON. Reverend Alvarez.

Reverend ALVAREZ. Senator, I have a very, very difficult time trying to concentrate on your comments inasmuch as they have it all already in California. They have rendered the Agricultural Labor Relations Act ineffective. We are now boycotting grapes because everybody knows that the law in California is not working. It is greed that we are talking about here, and that is why we are back to boycotting.

For us to respond to these issues about points in here in this law is ludicrous for us because the law is not working in California. It is simply not working, and why they are here asking for a bracero program when they have already succeeded in destroying the electoral process, the ability of people to select the unions, why they are here now asking for more is beyond me.

Senator SIMON. One final question. Mr. Durando, you are listed as president of the Farm Labor Alliance. The labor side, I am curious what you represent, what the labor organization is, because I gather you do not represent the United Farm Workers.

Mr. DURANDO. No; we do not represent the United Farm Workers, Senator. It is called the Farm Labor Alliance because we are dealing specifically with one single agricultural labor issue, recognizing that labor is one of the most important, if not the most important input into the perishable commodity sector. We are the most labor intensive crop.

We do have, I would just comment–I will submit for the record a list of our official membership, but I would comment that we do have one group, the Independent Farm Labor Contractors Coalition, predominantly a Hispanic group that is a member of our organization.

Senator SIMON. But basically you are a management group?

Mr. DURANDO. Pardon me?

Senator SIMON. You are a management group basically?

Mr. DURANDO. That is correct. The principals of each of these organizations act as the operating bodies for the alliance, that is correct.

Senator SIMON. All right. I thank you all very, very much. Thank you, Mr. Chairman.

Senator SIMPSON. Thank you, Paul. I just hope you will stay in it because, as thoughtful as I know you are, it is still a very tough and high emotion issue—I understand that. It does not make it easier, but I think I understand it and I respect the views of this gentleman and all of these people and all of those who testified today. I deeply respect that. I hope they respect my views. That is how we have to do it in a civilized society and that is why I need to sit down and visit with that gentleman. I want to do that at his convenience and at least we can better define where we totally disagree, because there certainly is some serious stuff out there.

Threats are being made. I have had threats on my family and it is a very interesting issue. I never dreamed it would get to that, but it is and that is not the way it ought to work in a system called the United States of America. I do not think it needs to ever get to that kind of level of activity.

Just one final question of Mr. Durando. Congressman Schumer's proposal that agricultural employers be exempted from employer sanctions, that current labor laws be expanded in scope or enforcement, how would your organization react to that proposal?

Mr. DURANDO. Mr. Chairman, I think, as Mr. Voss stated, I think we also would react negatively. We would be exempt from the sanctions, however we would view ourselves subject to increasing amounts of raids, if you will, by the INS to enforce the immigration laws, and I cannot overstate the impact of a raid in an orchard or a vineyard during a peak harvest operation.

Certainly the INS has a job to do and they come in. What is important to note is the harvest disruption that occurs, shutting down a harvesting operation for even half a day to a day can result in thousands of dollars of lost commodities because within hours they are overripe. You are picking maturity on a day-by-day basis. So we do not see that as a long-term viable solution. We would like to come in with something more constructive, positive, to contribute to the cause.

Senator SIMPSON. Well, as I say, I think I see right now two of you oppose the bill because you will not have enough farmworkers and two of you oppose the bill because you will have too many farmworkers, the U.S. workers not being able to get jobs, one undecided, and it would be great if bright people like yourselves might share with us if there is a constructive alternative which the other side at least might be willing to listen to in the process. Maybe that is still possible, because something will occur to correct the situation, whether Simpson is messing with it or Mazzoli is messing with it or Panetta is messing with it or Ted Kennedy, something will happen in the United States of America with regard to immigration reform or nonreform, but something will happen.

And I think it would be much more delightful if we could hear constructive alternatives. I think I am hearing more of that. You have not had the opportunity to share that and we do not have time to do that right now. We are ready to close. But I think I sense that with the panel, the previous panel, from my personally coming to know them, those people.

So with that, we will conclude and I will have some further questions in writing. I think Senator Kennedy may have some, he may wish to express.

I thank Senator Simon very much for his participation in the activities of the subcommittee, and activity is the word, and I thank Dick Day, my able chief counsel and staff director, and Carl Hampe and John Ratigan, Debbie Gibbs and Dee Dee Herzog, and also Jerry Tinker, the able minority counsel who is a very important part of the subcommittee's activities.

So we will conclude, adjourn tonight and take up again at 9:30 again tomorrow morning.

Thank you very much.

[Whereupon, at 5:15 p.m., the subcommittee adjourned, to reconvene on Tuesday, June 18, 1985, at 9:30 a.m.]

IMMIGRATION REFORM AND CONTROL ACT OF 1985

TUESDAY, JUNE 18, 1985

U.S. Senate,
Subcommittee on Immigration and Refugee Policy,
Committee on the Judiciary,
Washington, DC.

The subcommittee met at 9:45 a.m., in room 628, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the subcommittee) presiding.

Also present: Senators Simon and Grassley.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator Simpson. The hearing will come to order.

Senator Simon is joining me again today, and it is going to be great to have his participation on this subcommittee. I welcome you all.

I recognize the presence of the former Congressman Bob McClory there. Good to see you, my friend. We served on the Select Commission on Immigration and Refugee Policy, and I know of his great interest in immigration reform. I am glad to have him in the hearing.

This is the second day of the hearings on S. 1200, the Immigration Reform and Control Act of 1985. A third hearing is scheduled for Monday, June 24. We had a rather spirited and interesting session yesterday. Good testimony, very varied and very provocative.

Our first witness this morning is Congressman Jim Scheuer who has long held a very active interest in immigration reform, former chairman of the House Select Committee on Population, and his wife joins him here this morning. It is a pleasure to have you here. Look forward to hearing your testimony, and very nice to have you with us and appreciate having your views, Jim, please.

STATEMENT OF HON. JAMES H. SCHEUER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Scheuer. Thank you very much.

Senator Simpson. Excuse me, Paul. I recognize the presence of our member from Illinois, Senator Paul Simon.

Senator Simon. Before he testifies, I want to say I had the privilege of serving 10 years in the House of Representatives with Jim Scheuer, about 8 years with Bob McClory, and we have two distinguished witnesses here today, and it is a pleasure to be here.

I, unfortunately, because of a conflict that you are aware of, am going to have to leave here before very long. If I walk out on either one of you, it is not because I am irritated with what you have to say.

Senator SIMPSON. I apologize for not recognizing you sooner. I do apologize.

Mr. SCHEUER. Thank you very much, Senator.

It is a great privilege to be here today, and I am very honored to have opportunity of appearing before your committee. I want to pay tribute, as you did, to Congressman Bob McClory. In my 20 years in the House, I have met no finer Member of the House on either side of the aisle. I am honored also to have served with Paul Simon, who was a member of the Select Committee on Population, and served with great distinction on that committee, as he did in anything that he touched while he was on the House side. He is extremely knowledgeable on this subject, and I am very proud that a Member of our House and of our committee should be gracing these halls and adding to the quality of the work of this subcommittee, as I am sure he is doing.

I want to say this, Senator, that your tireless efforts and leadership on behalf of immigration reform have been recognized across the country, but have especially been recognized by your colleagues in the House and Senate of both parties. We do not always find in positions of real leadership in these extraordinarily sensitive and important House and committee chairmanships men of truly great national vision and outlook. The breadth of vision that you have shown and the courage that you have shown in standing up to what had to be strong political pressures has been a remarkable lesson to all of us. We salute you and we show our respect and gratitude to you in every way we can. It has been your efforts and your leadership and your vision and your eloquence that has shown this Nation the appalling conditions of our borders, and the urgent and desperate need to regain control of our borders, a phrase you have used over and over again. And you have shown us that there are still Members of the Senate and of the House who have the national interest at heart and who are national legislators at heart. Your record on the whole question of immigration reform is an extraordinary credit to the citizens of Wyoming, and I am sure they are just as proud as we are of the remarkable record that you have made and the remarkable achievement that you have won in a comparatively short few years in this capital.

Mr. Chairman, our Nation's immigration problems are very complex in nature, and today, rather than to go over the whole scope of the bill, the length and breadth of the bill, I am just going to concentrate on a single rather critically important new facet of the bill. That is the provision to initiate amnesty for illegal aliens as soon as possible, but not until the Presidential Commission determines that our borders are reasonably secure and that reasonably effective immigration law enforcement has been established over our borders, so that, in effect, we have regained control over our borders, something that you have been urging and pleading for many years.

As you know, and as Senator Simon knows, I have been pushing for an amendment to achieve this purpose in the House for the last

5 years, and I am delighted that it is now coming to the House, hopefully in the next few months, from the Senate under your aegis. A similar recommendation was advanced in 1981 by the Select Commission on Immigration and Refugee Policy, chaired by Father Hesburgh who, of course, testified before this committee yesterday.

The issue of amnesty has been one of the most controversial and sensitive and anxiety ridden aspects of previous immigration reform bills, and it has had our House of Representatives tied up in knots. It is my feeling and my hope that the triggering provisions of this bill will make the bill palatable to a good many Members of the House who have, up to now, opposed this bill in the past because they feared that the amnesty would trigger a vast flood of illegal immigration in addition to the constant flow of illegal immigration that is taking place on a daily basis. An estimated million to a million and a half illegal immigrants enter the United States each year. Some of them may return home temporarily or permanently, but we do not know for sure because our entry and exit records for legal immigrants are in such deplorable condition that it is hard for us to keep track. But we know that hundreds of thousands of them stay in this country. Unless reasonable immigration enforcement has been established before amnesty is implemented, we will be issuing a blanket invitation to hundreds of thousands and, in the course of a few years, millions of illegal immigrants to crash our borders and seek legal status even though they have no right to do so.

Let us face it, Senator. You know and I know, and Senator Simon knows that an illegal alien can purchase on either side of the border all of the documents that he needs to show that he came over here on the Mayflower if need be. He can get the driver's license, the birth certificate, the employment records, the rent receipts and other counterfeit documents he needs to establish that he has been here on any effective date that our Congress might put in an immigration bill. This can be done for a few hundred dollars and little or no effort.

Now, illegal aliens have good reasons for coming here, reasons that everyone of us would respect. The push factors from their own home countries are powerful. The factors pushing them north are the factors of unemployment, underemployment, disease, illiteracy, and harsh dictatorial governments in many cases. These are the push factors that are sending hundreds of thousands and, over a period of years, millions of immigrants north from all over Latin America and some from Asia too. Equally strong pull factors exist in our country, the greatest working democracy in the world. Our freedoms, our spirit of tolerance, our high employment prospects, our marvelous collection of public services and benefits, what we call the safety net, in addition to the normal public health and normal public education programs are powerful pull factors for the dispossessed, the hungry, the poor, and the unemployed in other lands. The income gap and the public services gap is increasing every year as population outstrips resources and outstrips any hope of these folks finding employment in their own home countries.

Statistics indicate that the economy of Hispanic America must produce 4 million new jobs a year from now until the end of the century just to maintain the current level of underemployment and unemployment. Four million jobs.

Now, the United States has a total GNP four times that of Hispanic America, and has never exceeded three million jobs a year except in 1 year during the roaring seventies when we hit 3.2 million jobs a year. So the idea that the underemployment and unemployment in Latin America, which is a powerful push factor, is going to improve any in the years to come is a myth and a sad and tragic illusion. The fact is that the per capita income gaps can only get worse. So the push factor can only get more powerful and the pull factor, the lure of this greatest democracy and the most powerful economy the world has ever seen, that pull factor has to become more alluring.

If we do nothing, we must be prepared for the inevitable increase in the throngs that are eager to crash across our borders to enjoy the American standard of living, the American quality of life and the great American democratic ideal.

So what do we do? First, we must do the obvious and increase the number of law enforcement personnel at the borders, and we must erect appropriate physical barriers to make illegal entry more difficult. Now, we do not need a Berlin Wall. We do not want a Berlin Wall. We do not want any kind of barriers or structures that would not be acceptable to any country in the world protecting its borders with normal reasonable law enforcement strategies of all kinds.

Currently in terms of law enforcement personnel, we have twice as many police officers, Senator, guarding the 209 acres on Capitol Hill than we do law enforcement agents guarding the entire 1,933 miles of border that separates us from Mexico. This is an intolerable situation. So, in addition to border security being improved and personnel being improved, we ought to zero in on the places where we know from the cost benefit point of view we would get the biggest return for a given dollar of additional investment. We should target specific law enforcement crossings in the Southwest where we know enormous numbers of illegal immigrants are crossing on a daily basis.

I spoke recently to former Immigration and Naturalization Commissioner Leonel Castillo. He testified, as Senator Simon may remember, at our hearings about 6 years ago, and I have kept in informal touch with him. He mentioned, when I told him I was going to testify, that there were a number of places we ought to give special attention to where we would reap real benefits from a modest expenditure of cost. He suggests that San Diego, CA, Yuma, AZ, and El Paso, McAllen, and Brownsville in Texas, are good places to start. He further recommended that there are known trails through rough mountain terrain that are well known to our Immigration and Naturalization Service officials. Those trails have been identified as high traffic routes and he recommends that they be covered more closely. He suggested about 50 percent of all illegal immigrants come in through these places that I have mentioned and through a small number of well identified mountain trails.

In addition, we could slow the entry of illegal immigrants seeking entry with counterfeit documents simply by training border control personnel in the latest sophisticated techniques to spot forgeries. Also border enforcement personnel can be equipped with the latest high technology advances in surveillance technology, where they could touch a stethoscope to a truck and detect heart beats, if there are any, in the rear compartments of the truck. They could touch a stethoscope to an automobile trunk to detect heart beats in that trunk. We could use infrared night scopes as members of the House and Senate have been doing for years when we go down and inspect the border to detect large numbers of people crossing the border illegally. They could be used on a routine basis to detect night crossings.

The problem has been that the Immigration and Naturalization agents would take us to spots and would show us vast numbers of people crossing the border in the still of the night. We could see them just as clearly as if it were daylight, and here these INS officials would be seething in their own frustration and anger because they did not have the personnel to begin to make serious apprehensions of the large number of people crossing the borders.

Mr. Chairman, I do want to say, reflecting some of the discussion that went on here yesterday, that the aim of the proposal to establish a Presidential Commission in my view is not at all a device to delay amnesty. It would be my heartfelt wish that the administration would start today to shore up those borders, as many Members of the House and Senate have been begging, pleading and urging over the years. This is not a partisan matter. Administrations of both parties, going back as far as I can remember, have been equally contemptuous of the integrity of our borders.

Senator, today, if the United States went to the Community of Nations to seek recognition, we would not be entitled to diplomatic recognition based on the condition of our borders, because the first quintessential prerequisite for diplomatic recognition is that a country seeking recognition have firm and secure borders, and we do not have that, and it is a bloody disgrace. Nobody can point the finger at either party. This has been a fault of administrations going back as far as I can remember, and it is about time we stopped it.

There is no other single industrialized nation that has failed so abysmally in controlling its borders. We do have a special problem. There is no other country in the world where an advanced developed country has a 2,000-mile border cheek to jowl with a developing country, and that gives us extra problems of course. We are not an island. We do not have the luxury of England, Australia, or New Zealand, having simply to watch their airports and regular ports with no borders to guard. The Atlantic and the Pacific Oceans guard their borders. We do not have that luxury. We do have a 2,000-mile border to guard.

What that means is we better well get on the stick and do something about it because the gross failure of our immigration policy is too transparent. It is high time—in Senator Simpson's own words—we took control of our own border and took control of our own destiny. We must end our de facto policy of open borders and stop those who want to short-cut our policy on legal immigration, which is a generous policy. We take two-thirds of all legal immigrants in the world who cross national boundaries, and I would be perfectly happy to increase that. Our 20,000 quota of Mexican legal immigrants could be increased, I would be happy to see that at 40,000, 50,000, or 60,000, and a compassionate America, I think, would too. But what we object to is the 1½ million or more who crash through every year uninvited, making a mockery of our laws and our regulations which hundreds of thousands of would-be immigrants are respecting.

I believe deeply that we cannot continue to reward those who break the law and violate our borders, while this policy penalizes many other decent would-be immigrants who play by the rules and wait for years to obtain legal status in the hope of living in our glorious country.

Senator SIMPSON. That is a powerful statement and I heard it all, and beautifully said. Obviously you have a great sense of the issue. You have proven that with your past hard work and effectiveness, and you have been, indeed, ahead of your time with regard to suggestions you have made and proposals you have brought forth in your duties. You have been very generous with your time. I am very humbled by your remarks. There are many of us in both parties who labor long on this issue, a very unpopular political issue. It is not the way to go out and run your campaign. I just was elected last year in Wyoming, and I had serious reservations about how they felt about me dabbling in immigration reform, and I went right to them and asked how they felt about my involvement in this issue. They were patient with me. It was like we do not know what you are doing, you idiot, but get it over with. [Laughter.]

So there was a patience involved with it because simply any thoughtful person knows whatever we are doing cannot continue without some serious consequences of a various nature and agree that everyone has a different view of that too.

But I would just like to ask you perhaps one question with regard to the concerns that some express with a triggered legalization program. There will be illegal aliens who will be required to remain in their present difficult circumstances until the Legalization Commission determines that the program can begin, and I know you share my view that it should begin as soon as it can. How do you respond to that? I would be interested in how you would handle that, Jim.

Mr. SCHEUER. Well, I cannot speak for you, Senator, although I think I can read your mind on this, that I would like amnesty to take place this afternoon. I think it is offensive to every concept of America and what our Constitution stands for for us to have two classes of citizens, to have a class of 238 million Americans, and then to have an underclass—a growing underclass of people who are here who cannot seek recourse to the courts, to law enforcement, to the protection that all other citizens have—who are easily subject to exploitation and mistreatment, who are afraid to surface, take advantage of the organs of justice in our community. It is a poisonous situation and it is absolutely un-American, and the sooner we can end it, the better. That is why I favor amnesty at the soonest possible time. That is why I would hope the administration would begin now to get our borders into some kind of credible, reasonable shape so that there will not be any delay when we pass this immigration law.

It could be they could do this in a period of 6 months or 1 year so that there would be little or no delay, but the consequences of passing an amnesty provision without bringing our borders under control, are disastrous. I keep using your phrase, Senator, and it is a tribute to you that that is the best phrase I can think of and you have been saying it for years, if we do not bring our borders under control and we do have amnesty, we are going to trigger a tidal wave of illegal immigration of people crashing over our borders, superimposed on the current level of illegal immigration that is going to make current levels look trivial. Our country simply cannot afford that.

We have people in our country now, poor people, black people, Hispanic people, and white people who desperately need the support structure that we have built up over half a century laboriously brick by brick, this beautiful structure of compassion, decency, and caring. Hispanic people who are unemployed or who are elderly need the benefit of that system just as much as the rest of us who are poor, unemployed, or elderly. And in deference to the Hispanics, blacks, and all of us who need the benefit of those support systems now, I fear the results of the inundation that would occur with amnesty without securing our borders that would be almost mathematically predictable. These support services would be strained to the breaking point. They are strained now to the breaking point. We are not doing what we should now for elderly people, for poor people. We cannot be proud that we are doing as much as we would like to do. But yet we would not in any way be able to continue even those stretched out, thinned out programs if the kind of volume of humanity surging across those borders that I anticipate were to develop, and it is almost mathematically predictable that it would develop.

Senator SIMPSON. I deeply appreciate your statement and I'd really like to have a copy of that. That is not only a powerful one, but it threads through what we all know, that we want to preserve our historical compassion and our heritage for legal immigration. And in a sense we are going to lose that if we do not deal with the issue of illegal immigration. That is another part of the entire issue.

Mr. SCHEUER. Absolutely.

Senator SIMPSON. You and I have talked about that, and I really have enjoyed working with you and hearing of your views and incorporating some of those views into the legislation because of your reputation in the field. And I thank you very much for your testimony.

Do you have anything, Chuck? I recognize Chuck Grassley, my good colleague from Iowa, who has sat and labored long with me for lots of hearings and lots of hours in the last few years.

Senator GRASSLEY. My friend and colleague from the days I served in the House with you, I appreciate your leadership in this area, and I do not think I will upset you if I do not have any questions at this particular point because you have been sitting there for a long time responding already.

Senator SIMPSON. Thank you. Thank you very much.

Mr. SCHEUER. Thank you very much, Senator. I am grateful for the opportunity to appear and I am grateful to you for your extraordinary leadership over the years. And I am grateful for the people of your State for sending you here and keeping you here. And you make humorous remarks about their tolerance. I expect they have as deep a respect and admiration for your tremendous leadership as I do.

Senator SIMPSON. Thank you very much. Keep going. [Laughter.] Thank you, Jim, very much indeed. Nice to see you.

[Prepared statement follows:]

PREPARED STATEMENT OF U.S. REPRESENTATIVE JAMES H. SCHEUER

MR. CHAIRMAN, I AM HONORED TO HAVE THE OPPORTUNITY TO APPEAR TODAY BEFORE THIS SUBCOMMITTEE TO TESTIFY ON YOUR IMMIGRATION REFORM BILL.

YOUR TIRELESS EFFORTS TO DEVELOP A COMPREHENSIVE PLAN TO COPE WITH OUR NATION'S MASSIVE ILLEGAL IMMIGRATION PROBLEM HAVE WON THE ADMIRATION OF YOUR COLLEAGUES IN BOTH HOUSES AND ON BOTH SIDES OF THE AISLE.

IT IS YOU AND YOUR EFFORTS THAT HAVE SHOWN THIS NATION THAT THERE ARE STILL SENATORS AND CONGRESSMEN WHO HAVE THE NATIONAL INTEREST AT HEART.

YOUR LEADERSHIP ON THIS IMPORTANT AND CONTROVERSIAL ISSUE IS A CREDIT TO THE CITIZENS OF WYOMING WHO SENT YOU TO THE U.S. SENATE.

I APPLAUD YOUR WORK ON THIS IMPORTANT BILL AND I LOOK FORWARD TO THE DAY WHEN WE AS A NATION WILL REGAIN REASONABLE CONTROL OVER OUR BORDERS.

MR. CHAIRMAN, OUR NATION'S IMMIGRATION PROBLEMS ARE COMPLEX IN NATURE, BUT TODAY I WILL DEVOTE MY TESTIMONY TO A SINGLE, BUT IMPORTANT, FACET OF THE BILL -- THE NEW PROVISION TO INITIATE AMNESTY FOR ILLEGAL ALIENS

AS SOON AS POSSIBLE, BUT NOT UNTIL A PRESIDENTIAL COMMISSION DETERMINES THAT REASONABLY EFFECTIVE IMMIGRATION LAW ENFORCEMENT HAS BEEN ESTABLISHED.

AS YOU KNOW, I HAVE PUSHED FOR AN AMENDMENT TO ESTABLISH SUCH A COMMISSION FOR NEARLY FIVE YEARS IN THE HOUSE.

A SIMILAR RECOMMENDATION WAS ADVANCED IN 1981 BY THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, CHAIRED BY FATHER THEODORE HESBURGH, WHO TESTIFIED BEFORE THIS SUBCOMMITTEE YESTERDAY.

THE ISSUE OF AMNESTY FOR ILLEGALS HAS BEEN ONE OF THE MOST CONTROVERSIAL ASPECTS OF PREVIOUS IMMIGRATION REFORM BILLS.

IT IS MY FEELING THAT THE "TRIGGERING" PROVISION WILL MAKE THIS BILL PALATABLE TO SOME OF THOSE WHO HAVE OPPOSED IT IN THE PAST.

AN ESTIMATED ONE-AND-A-HALF MILLION ALIENS ILLEGALLY ENTER THE U.S. EACH YEAR, AND ALTHOUGH MANY RETURN HOME, HUNDREDS OF THOUSANDS OF THEM STAY ON, ADDING TO THE MILLIONS OF ILLEGALS ALREADY RESIDING HERE.

UNLESS REASONABLE IMMIGRATION ENFORCEMENT HAS BEEN ESTABLISHED BEFORE AMNESTY IS IMPLEMENTED, WE WILL BE ISSUING AN INVITATION TO THOUSANDS OF ALIENS

TO CRASH OUR BORDERS AND SEEK LEGAL STATUS, EVEN THOUGH THEY HAVE NO RIGHT TO DO SO.

LET'S FACE IT, AN ILLEGAL ALIEN CAN PURCHASE THE NECESSARY COUNTERFEIT DOCUMENTS TO SHOW THAT HE OR SHE LIVED HERE PRIOR TO 1979 -- AS REQUIRED IN THE BILL -- AND SEEK ENTRY INTO THE AMNESTY PROGRAM.

IT'S NOT HARD TO OBTAIN COUNTERFEIT DRIVER'S LICENSES, RENT RECEIPTS, PAYROLL STUBS, BIRTH CERTIFICATES AND THE LIKE.

FOR A FEW HUNDRED DOLLARS AND LITTLE EFFORT, ILLEGAL ALIENS CAN OBTAIN FALSE CREDENTIALS THAT SHOW THEY CAME OVER HERE ON THE MAYFLOWER.

ILLEGAL ALIENS HAVE POWERFUL REASONS TO SEEK LEGAL STATUS UNDER AMNESTY.

THE PROSPECTS OF ENHANCED JOB OPPORTUNITIES, POLITICAL AND PERSONAL FREEDOM, AND A BETTER LIFE IN GENERAL ARE BUT A FEW OF THE "PULL" FACTORS WHICH DRAW MILLIONS ACROSS OUR BORDERS.

EQUALLY STRONG "PUSH" FACTORS SUCH AS SOARING UNEMPLOYMENT, POVERTY, HUNGER AND HARSH MILITARY DICTATORSHIPS ARE AT WORK IN THE ALIENS' HOMELANDS.

IN ESSENCE, THERE IS AN INCOME GAP BETWEEN OUR NATION AND THE ECONOMIES OF THE NATIONS WHERE THE BULK OF OUR ILLEGAL ALIENS COME FROM.

AND THAT INCOME GAP WILL WIDEN DURING THE COMING YEARS AS POPULATION GROWTH RUNS RAMPANT IN THESE COUNTRIES.

STATISTICS SHOW THAT LATIN AND CENTRAL AMERICA MUST CREATE 4 MILLION NEW JOBS IN EACH REMAINING YEAR OF THIS CENTURY JUST TO AVOID INCREASES IN THE REGION'S ALREADY VERY HIGH UNEMPLOYMENT RATES.

IT IS UNLIKELY THAT THE REGION WILL SUCCEED, CONSIDERING THAT THE U.S. ECONOMY, WHICH IS 4 TIMES LARGER, NEVER HAS CREATED MORE THAN 3.2 MILLION JOBS IN ANY GIVEN YEAR, EVEN DURING THE GOLDEN ECONOMIC YEARS OF THE 1970S.

SO THE PULL AND PUSH FACTORS WILL INTENSIFY -- AND WE MUST BE PREPARED FOR THE INEVITABLE.

FIRST, WE MUST INCREASE THE NUMBER OF LAW ENFORCEMENT AGENTS AT THE BORDERS, AND ERECT APPROPRIATE PHYSICAL BARRIERS TO MAKE ILLEGAL ENTRY MORE DIFFICULT.

CURRENTLY, THERE ARE MORE THAN TWICE AS MANY SPECIAL CAPITOL POLICE OFFICERS ASSIGNED TO PROTECT THE 209-ACRE

U.S. CAPITOL COMPLEX THAN THERE ARE LAW ENFORCEMENT AGENTS GUARDING OUR ENTIRE 1,933-MILE BORDER WITH MEXICO.

IN ADDITION, BORDER SECURITY SHOULD BE TIGHTENED AT SPECIFIC BORDER CROSSINGS IN THE SOUTHWEST WHERE WE KNOW THAT LARGE NUMBERS OF ALIENS CROSS ILLEGALLY ON A DAILY BASIS.

FORMER IMMIGRATION AND NATURALIZATION COMMISSIONER LEONEL CASTILLO SUGGESTS THAT SAN DIEGO, CALIFORNIA, YUMA, ARIZONA, AND THE TEXAS COMMUNITIES OF EL PASO, MCALLEN AND BROWNSVILLE ARE GOOD PLACES TO START.

AT THE SAME TIME, TRAILS THROUGH ROUGH MOUNTAIN TERRAIN THAT IMMIGRATION OFFICIALS HAVE IDENTIFIED AS HIGH TRAFFIC ROUTES SHOULD ALSO BE COVERED MORE CLOSELY.

AN ESTIMATED 50 PERCENT OF ILLEGALS GAIN ENTRY THROUGH THE LOCATIONS I HAVE JUST MENTIONED.

IN ADDITION, WE COULD SLOW THE FLOW OF ILLEGALS SEEKING ENTRY WITH COUNTERFEIT DOCUMENTS BY TRAINING BORDER PERSONNEL IN THE LATEST SOPHISTICATED TECHNIQUES TO SPOT FORGERIES.

IN THE SAME VEIN, BORDER PERSONNEL SHOULD BE EQUIPPED WITH THE LATEST HIGH-TECH ADVANCES IN SURVEILLANCE TECHNOLOGY.

ALL TYPES OF SUCH TOOLS ARE AVAILABLE TO MONITOR ENTRY: STETHESCOPES TO DETECT HEARTBEATS IN TRUCK COMPARTMENTS AND CAR TRUNKS, INFRA-RED NIGHTSCOPES, AND GROUND-LEVEL AND AIRBORNE SENSORS, TO NAME A FEW.

MR. CHAIRMAN, I'M SURE YOU WILL AGREE WITH ME THAT THE AIM OF THE PROPOSAL TO ESTABLISH A PRESIDENTIAL COMMISSION TO REVIEW OUR BORDER SECURITY IS NOT AN ATTEMPT TO DELAY AMNESTY UNNECESSARILY.

IN FACT, THE ADMINISTRATION CURRENTLY HAS THE POWER TO IMPLEMENT MANY OF THE RECOMMENDATIONS I HAVE JUST OUTLINED -- A MOVE THAT COULD STREAMLINE THE WHOLE AMNESTY PROCESS.

EVERY SINGLE OTHER INDUSTRIALIZED, DEVELOPED NATION HAS SUCCEEDED IN REASONABLY SECURING ITS BORDERS.

THERE IS NO EXCUSE FOR THE DISGRACEFUL CONDITION OF OUR IMMIGRATION POLICIES.

IT IS HIGH TIME THAT WE TAKE STEPS TO CONTROL OUR OWN BORDERS -- AND OUR OWN DESTINY.

WE MUST END OUR DE FACTO POLICY OF "OPEN BORDERS" AND STOP THOSE WHO WANT TO SHORTCUT OUR POLICY ON LEGAL IMMIGRATION.

WE CANNOT CONTINUE TO REWARD THIS WHO BREAK THE LAW AND VIOLATE OUR BORDERS, WHILE PENALIZING LEGITIMATE WOULD-BE IMMIGRANTS WHO PLAY BY THE RULES AND WAIT FOR YEARS TO OBTAIN LEGAL STATUS.

Senator SIMPSON. The next panel this morning is Roger Conner, executive director for the Federation for American Immigration Reform; Paul S. Egan, deputy director of the National Legislative Commission of the American Legion; Jerry Jasinowski, executive vice president of the National Association of Manufacturers; and Dr. M. Rupert Cutler, director of the Environmental Fund.

It is very good to have you here, and if you will proceed under the previous time restraint, and we will just proceed in the order of the agenda there, please.

Therefore, Mr. Conner first, please.

STATEMENTS OF PANEL CONSISTING OF ROGER L. CONNER, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM; PAUL S. EGAN, DEPUTY DIRECTOR, NATIONAL LEGISLATIVE COMMISSION, THE AMERICAN LEGION; JERRY JASINOWSKI, EXECUTIVE VICE PRESIDENT AND SENIOR ECONOMIST, NATIONAL ASSOCIATION OF MANUFACTURERS; AND DR. M. RUPERT CUTLER, EXECUTIVE DIRECTOR, THE ENVIRONMENTAL FUND

Mr. CONNER. Thank you, Mr. Chairman.

I am Roger Conner, director of the Federation for American Immigration Reform, and I would like to say, Mr. Chairman, that in our audience today is the newest member of FAIR's National Advisory Board, Congressman Robert McClory. We are honored he has joined our advisory board, and pleased that he in this way is once again throwing his shoulder to the wheel of immigration reform.

One of the words that has been missing as we listened to the testimony yesterday was the word "thanks," because, Mr. Chairman, were it not for your tenacity and determination, we would not all be here having the chance to fight over this immigration legislation again. Immigration reform would be dead.

Throughout this trying task, it seems to us that you have tried to maintain an enlarged view of the national interest instead of viewing this legislation as a constant group of tradeoffs beween special interests. In that sense, this legislation some have described as a political strategy document. I do not think it is. Every change within it responds to a legitimate concern or a legitimate argument that was advanced in the last 4 to 6 years, and so in that sense it is the legislative process working the way it is supposed to work.

We think you will succeed, Mr. Chairman, in part because we are optimists in the sense that Oscar Wilde described an optimist. He said the basis of all optimism is sheer terror, and we also believe that the thrust of immigration reform legislation is that success goes to the persistence.

The heart and soul of this bill is employer sanctions. Without effective sanctions and increased enforcement of our current laws, there is no chance to stop illegal immigration. Every public opinion poll that has been taken in the last 5 or 6 years shows the American people giving striking support to employer sanctions. The most interesting poll reflects new findings from the National Federation of Independent Business, which shows that business leaders in this country strongly favor employers sanctions.

But over the past years we have heard opponents of employer sanctions refer to a report from the General Accoonting Office which concluded that employer sanctions have not worked in Germany. If the Germans cannot make it work, they ask how can we? Unfortunately, when the GAO team went to Europe, the laws in Germany and France had only recently been passed, and little effort had yet to be spent on enforcement. So this past winter I went back and retraced the GAO steps. I met personally with the relevant officials charged with enforcing these laws in Europe in addition to journalists, lawyers, and business leaders. I found that the oft represented GAO conclusions are simply outdated. The GAO report did state that the Europeans were modifying their laws and strengthening enforcement, and as a result, I found that employer sanctions are now serving to deter and reduce the employment of illegal aliens in Europe.

The lesson from Europe is not to abandon sanctions. The lesson from Europe is that they will not work without a serious commitment to enforcement.

The most carefully crafted compromise contained in this legislation, and the most carefully crafted response to the prior principled arguments, is what I would call the Simpson compromise on amnesty. In the Simpson compromise you have responded to those of us who would say we are concerned about amnesty, because this will trigger yet another wave of illegal aliens into this country. To us you have said all right, we will not have amnesty until illegal immigration is controlled. So if that is the objection, your objection is responded to. To those people who say they want amnesty because they want to remove an exploitable legal underclass, you say, all right, but we have got to have control first or, otherwise, if we have amnesty without control, we will simply draw in another exploitable illegal underclass and recreate the problem we are trying to solve.

The thrust of the Simpson compromise responds to both arguments in a definitive way. It is Solomon like in a way because the only people who can then continue to oppose it are those who want immigration reform to die or those who want blanket amnesty with no control. And to that group who wants blanket amnesty with no control, I say to them that is the most dangerous of all possible options. Think about it. If we have amnesty and we do not have control, picture "CBS News." The first report is the people lining up at the immigration centers to apply for amnesty. The second report is the people continuing to come across the border and the airports retaining their same inspection problems. It would be an affront to the American people. It has the potential of triggering a political backlash and all that stuff—as you have named it—that we have all been so concerned might come out.

A blanket amnesty with no control is the worst of all possibly worlds and one to be avoided. We support the legislation. We think it is the best chance for immigration reform, a carefully crafted document.

Within our testimony we have suggested changes that will improve the bill yet further achieve the goals that you, Senator Simpson, have set forth.

I thank you very much for the opportunity to testify.

[Prepared statement follows:]

PREPARED STATEMENT OF ROGER L. CONNER

Mr. Chairman, members of the subcommittee, my name is Roger Conner, and I am the executive director of FAIR, the Federation for American Immigration Reform.

Thank you for this opportunity to provide FAIR's views on S.1200, the Immigration Reform and Control Act of 1985.

At the outset, Mr. Chairman, I would like to express our sincere admiration for the tenacity, persistence and clarity of thought you have displayed in charting the hazardous path to meaningful immigration reform.

For half a decade, Mr. Chairman, you have worked tirelessly on behalf of a national problem whose magnitude is increasing so rapidly that it soon may be beyond the capacity of this republican body to manage.

Throughout this trying task, always you have been willing to maintain an enlarged view of the national interest, often in the face of the seemingly endless throng of selfish, self-centered special interest groups that seem to thrive in our nation's capital.

On the present record, history will record your admirable disposition favorably, irrespective of the ultimate outcome.

S. 1200

That said, I will now confine myself to the bill under consideration.

Mr. Chairman, you have been quoted as saying that "immigration reform is a lot like bear meat. The more you chew it, the bigger it gets."

While the observation may be the rule, it has found an exception in S.1200. This package is streamlined considerably from previous undertakings.

Deleted from this bill is any attempt to streamline political asylum adjudications, or to reform legal immigration preferences. Though missing from S.1200, the need for the reforms envisioned by your earlier, broader bills is no less acute.

A Ceiling on Legal Immigration

The glaring omission, however, is the absence of a comprehensive ceiling on legal immigration.[1] Polls and voting patterns have demonstrated wide-spread support for an overall cap on legal immigration, including the inclusion of the immediate relatives of U.S. citizens.

As originally conceived and proposed by the Select Commission on Immigration and Refugee Policy (SCRIP), amnesty for illegal aliens was viewed as a policy tradeoff for a ceiling on legal immigration.[2]

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[1] For example, S.2222/H.R.5872 in the 97th Congress (the Immigration Reform and Control Act of 1982) contained provisions that provided for an annual ceiling on legal admissions to the United States of 425,000 per annum, not including refugees. Immediate relatives of U.S. citizens would have been permitted to enter without limit, as well as so-called "special immigrants," but the number of "numerically limited" immigrants who could have come into the U.S. in any one year would have been limited to the difference between 425,000 and the immediate relatives and "special immigrants." This provision was removed initally by the full Committee on the Judiciary of the House of Representatives.

The reasons for such a scheme are simple: amnesty for an unknown number of illegal aliens, has the potential to create a backlog for permanent residence visas of unprecedented proportions. The queue for visa priority numbers is already one and one-half million, and some bona fide applicants must wait over ten years. Because so many illegal aliens allegedly send money home to relatives, it is safe to assume many who receive legal status under an amnesty will quickly petition to try to bring in others, further enlarging the number waiting in line.

This larger backlog will manifest itself as intense political pressure to raise the number of visas available for the affected countries (we already see that today in the way in which S.1200 treats Mexico). And as those amnestied ultimately become citizens, their immediate relatives will enter without limit -- causing a dramatic rise in annual legal immigration.

For these compelling reasons, FAIR continues to oppose all forms of amnesty that have been proposed.

But to the extent there is to be an amnesty, the linkage between such legalization program and a comprehensive ceiling on legal immigration would seem to represent the outermost-reaches of prudent public policy.

Because its wisdom seemed self-evident, it had been assumed by FAIR that the latter would always attach itself to the former.

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[2] The Select Commission also endorsed the concept of a triggered amnesty, i.e., one not operative until effective control mechanisms are in place.

A Triggered Amnesty

Time has proven this assumption wrong. Over the past four years, forces opposed to any reasoned constraints or encumbrances to unlawful entry have succeeded in reframing the three-pronged scheme of employer sanctions, an immigration ceiling coupled with reform of the preference categories and amnesty into a narrower, less-fair "tradeoff": an amnesty in exchange for employer sanctions.

FAIR has noticed a paucity of public debate on the long-range "chain migration" that could be expected following blanket legalization absent a ceiling and effective entry controls. We are certain that if the American people fully realized the scope of future problems that would attend immediate amnesty, the outcry would be intense.

But opposition to amnesty is already strong, and we believe the structure of S.1200 reflects the public mood. We commend you, Mr. Chairman, for pausing to reevalute assumptions before reintroducing legislation.

We concur with legislation that would defer any blanket grant of lawful status until immigration controls, including effective employer sanctions, are in place. We applaud the creation of a "Legalization Commission," a body that will certify when enforcement mechanisms are in place that substantially control illegal entry, prevent and deter violations of the terms of entry, and eliminate substantially the employment of illegal aliens.

However, assuming the bill were enacted as written, the "Legalization Commission" would surely face severe political pressure to declare the borders "under control" in order to trigger amnesty. Indeed, the title Legalization Commission implies an affirmative mandate to declare amnesty at some point in the foreseeable future; institutional force will loom heavily to declare the borders under control by a date certain, whether or not this is actually the case. We are not saying that this is a sinister process; we are saying that it is inevitable.

To protect the commission from such pressure, and to ensure that your intent is respected, we would like to suggest more precise language on two matters: 1) a minimum period of time specified before the commission could declare the borders under control;[3] and 2) specific threshold levels for indicies of illegality that must be reached before the commission can certify that employer sanctions and other control vehicles are operative.[4]

On the other hand, FAIR is confident that with enforceable employer sanctions and effective entry controls in place, many transient illegal aliens will have been encouraged to return home, thereby shrinking the population eligible for legalization to those with firm roots set down in their communities.

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[3] In our view, three years after enactment of the bill would be the minimum feasible time before which any affirmative finding of control could be credible.

[4] Examples would be apprehensions of illegal aliens drop below 10,000 per annum, or a study by an anti-fraud task force that I-130 fraud detection rates had dropped below 2 percent. It would also be preferable to have the final findings of the commission reviewable by a Federal court of law on petition of any state to ascertain whether the findings triggering the effective date of the legalization program under section 202(a)(1)(C) are supported by substantial evidence.

Overall, FAIR believes that both conceptually and operationally, the legalization program of S.1200 is a dramatic improvement over those considered in previous years.

Employer Sanctions

Mr. Chairman, FAIR supports the provisions of S.1200 that ban the knowing employment of illegal aliens.

Although FAIR is concerned that the Texas Proviso has been interpreted in an unduly narrow fashion,[5] time has shown that

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[5] Many people believe that employment of illegal immigrants in American jobs is perfectly legal. After all, there is a provision in the immigration laws that says: "Employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring" an illegal immigrant. 8 U.S.C. 1324(a). This provision is known as the Texas Proviso.

After extensive research into the legislative history and judicial interpretations of the Texas Proviso, we have discovered that the Proviso is not the complete safe harbor that many assume. The clause that proscribes harboring actually defines three crimes: ". . . willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, habor or shield from detection. . . ." 8 U.S.C. 1324(a)(3) (emphasis added). The three crimes are separate, and violation of any one of the three is a felonly, punishable by a fine of $2,000 and imprisonment for up to five years.

The Texas Proviso applies by its terms only to "harboring" illegal immigrants, not to shielding or concealing. In addition, since the Texas Proviso does not define what "employment (including the usual and normal incidences of employment)" means, the extent of protection from prosecution for harboring illegal immigrants is unclear.

There was extensive congressional debate on the Proviso several months before it became part of the massive Immigration

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and Nationality Act of 1952. The debate indicates that Congress intended to protect only an unwitting or unknowing employer who innocently happended to hire an illegal immigrant. The Proviso was never intended to be a blanket shield for all employers of illegal immigrants in all circumstances.

The sponsor of the bill (and defender of the Texas Proviso) Senator Kilgore explained the Proviso to the Senate this way:

> I am trying to [strengthen the immigration bill, but] not at the expense of some man who unwittingly or unknowingly, or thoughtlessly hires a man he does not know to be a[n illegal immigrant], who may be pretty well in the interior of the country, and who is seeking employment. The man to whom I am referring may need an employee, and hires the alien. That of itself should not subject him to a penalty. *Once he finds out the real situation, he is knowingly and willfully harboring the man, and the authorities can go after him.* 98 *Cong. Rec.* 794 (Feb. 5, 1952) (emphasis added).

The United States Supreme Court has never addressed the Proviso directly although in unrelated cases last year, it repeated the position that the Proviso "expressly exempts American businesses that employ undocumented aliens from all criminal sanctions...," *INS* v. *Delgado*, 104 S. Ct. 1758, 1775 (1984); *Sure-Tan, Inc.* v. *N.L.R.B.*, 104 S.Ct. 2803 (1984). An earlier case expressly reserved the question of whether the Proviso immunized an employer who knowly hired an illegal alien, *De Canas* v. *Bica*, 424 U.S. 351, 361 n.9 (1976).

Lower federal courts which have ruled on the three crimes in 8 U.S.C. 1324(a) have construed the Proviso very narrowly. The Second, Fifth, and Ninth Circuit Courts of Appeal have several times found that the Proviso is only the limited protection intended by its congressional authors. *See, e.g., United States* v. *Rubio-Gonzolez*, 645 F.2d 453 (5th Cir. 1981); *United States* v. *Lopez*, 521 F.2d 437 (2nd Cir.); *cert. den.* 423 U.S. 995 (1975); *United States* v. *Herrera*, 584 F.2d 1137 (2nd Cir. 1978); *United States* v. *Fierro*, 692 F.2d 1291 (9th Cir. 1983); *United States* v. *Acosta De Evans*, 531 F.2d 428 (9th Cir.), *cert. den.*, 429 U.S. 836 (1976); *United States* v. *Gonzalez-Hernandez*, 534 F.2d 1353 (9th Cir. 1976).

These lower federal courts consistently found that the Proviso applies only to "harboring", and that the Proviso does not insulate from criminality any "conduct tending substantially to facilitate an alien's remaining in the United States illegally." *United States* v. *Lopez, supra*, 521 F.2d at 441; *see, United States* v. *Cantu*, 557 F.2d 1173 (5th Cir.), *cert. den.* 434 U.S. 1063 (1977); *United States* v. *Herra, supra*, 584 F.2d at 1144; *United States* v. *Rubio-Gonzales, supra*.

The lower federal courts have found employers liable for employer sanctions -- applicable to all employers -- is critical if we are ever to cut off the flow of millions of job-seeking aliens into this country.

Employer sanctions is the heart and soul of any immigration reform proposal. Without employer sanctions, there can be no immigration reform.

Over the past years, we have heard from opponents of employer sanctions about the negative experiences of other countries in trying to enforce their laws. Unfortunately, when the General Accounting Office first studied the efficacy of employer sanctions elsewhere, most of these countries had just passed their laws, and had had little experience in their enforcement.

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such activities as: meeting illegal immigrants at an airport upon their arrivals; providing food and water to illegal immigrants; instructing aliens to avoid detection; providing lodging to illegal immigrants; warning illegal immigrants on the approach of immigration officers; and providing special exits or working conditions designed to help illegal immigrants escape detection or apprehension. The strong language used by the lower courts indicates that only innocent, unknowing employment of illegal immigrants is protected by the Proviso. Almost any other activity by an employer violates the law.

Thus, although there is a common belief in Washington that the Texas Proviso is absolute protection for employers of illegal immigrants, many courts have rejected that view. There are many employers who knowingly hire illegal immigrants, considering them hard-working and unlikely to complain if they are exploited; these employers, particularly those who seek out or exploit illegal immigrants, may be liable to prosecution under the immigration laws despite the Texas Proviso.

We believe the INS should act to expand the number of prosecutions under this statute. The notion that the Texas Proviso allows American employers to hire illegal immigrants with impunity needs to be corrected.

I decided to investigate these claims personally this past winter, with a trip to several European countries to meet with the relevant officials personally charged with enforcing these laws, in addition to journalists, lawyers and business leaders. What I found was a vastly different story than that alleged by opponents of this measure; after refinement, employer sanctions is serving to deter and reduce the employment of illegal aliens in Europe. I include my findings in an appendix to this testimony.

Poll after poll has shown that the American people support a law making it illegal for employers to hire illegal aliens, including striking new findings from the National Federation of Independent Business that show their members strongly in favor of employer sanctions.[6]

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[6] NFIB Poll Results, released May/June 1985, "NFIB Mandate":

12. Do you favor or oppose exempting firms with four or fewer employees from immigration legislation?
Favor 34% Oppose 62% Undecided 4%

13. Do you favor or oppose imposing some type of economic sanctions as an economic deterrent to hiring illegal aliens?
Favor 68% Oppose 22% Undecided 10%

14. Do you favor or oppose granting amnesty to illegal aliens?
Favor 18% Oppose 71%. Undecided 11%

15. Do you favor or oppose enlarging the guest worker program?
Favor 48% Oppose 42% Undecided 10%

16. Do you favor or oppose creating a tamper-proof identification card that can be verified by telephone?

We believe that both polls and previous Senate and House voting patterns demonstrate the overwhelming support and desirability of employer sanctions. And we believe that the time has come for Congress to act and S.1200 is a good place to start.

The enhanced civil fine penalty structure ranging from $200.00 to $10,000.00 is sound, and should provide an improved deterrent for persistent violators.

The bill provides for immigration judges to make decisions on fines and violations after the employer has presented his case at a hearing, and permits administrative review before the BIA and judicial review in the Circuit Court of Appeals.

While we support the scheme in theory, we agree with the Reagan Administration that the civil fine determinations should be made by the District Director, with administrative review before administrative law judges or special inquiry officers,[7] and judicial review only allowed in the course of a collection suit brought by the Attorney General in U.S. District Court.

FAIR has persistently supported of two major components of any employer sanctions program:

(1) that any verification system be universal, i.e., that employers be required to verify the lawful status of all new hires; and

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Favor 60%   Oppose 28%   Undecided 12%

[7] FAIR believes that the use of the term "immigration judges" in sections 121(d)(2)(A) and 121(h)(1) is confusing in whether or not it creates a new class of reviewing officer by statute.

(2) that strong consideration be given to the use of a telephone "call-in" verification system.

While we understand the reasons for removing a universal verification requirement, we have maintained that a call-in system would both alleviate the burden on employers when they screen prospective employees and, at the same time, would minimize any incentive an employer may have to avoid hiring "foreign-looking" persons.

The sad truth of the matter is that all manner of fraudulent documents may be purchased anywhere in the United States, and any system that attempts to rely on existing documents will be doomed to fail. We continue to believe that a call-in system is the best approach, and regret that the bill encumbers the development of such a system by imposing a burdensome two year notice and congressional review provision before such a system could be implemented nationwide. We would urge that the requirement be removed.

Conclusion

In sum, we believe that S.1200 is a good bill. It is a pragmatic, realistic and constructive effort to make immigration reform a reality in 1985, and FAIR will work hard for the bill's passage.

Mr. Chairman, there are a number of other minor drafting or technical issues that we would also like to address. With your permission, we will be submitting these for the record at a later time.

APPENDIX

MW VIII Europe.2

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A VIEW OF EMPLOYER SANCTIONS FROM EUROPE

By Roger Conner

Should employers who hire illegal aliens be penalized? As Washington has writhed over this question for more than a decade, the argument has taken many twists.

Employer groups, civil libertarians, and Hispanic political organizations have opposed sanctions, each for different reasons. But during this past session of Congress they added a refrain in unison: that employer sanctions would not work, either to eliminate, or even significantly reduce, the employment of illegals.

The principal evidence cited for this claim was a 1981 report of the General Accounting Office (GAO) which had examined the effectiveness of similar legislation in other countries, including France and Germany. The report concluded that "such laws were not an effective deterrent to stemming illegal employment" in European countries. If the Germans can't make sanctions work, went the argument, how can we expect our own government to do any better?

Earlier this year I spent four weeks in Europe, during which time I had the chance to interview government officials, academic experts, journalists and political leaders. In each interview I asked for a description and evaluation of the government's policies, whether employment of illegal immigrants was on the increase, and whether the employer sanctions law was having any deterrent effect on employers or potential illegal immigrants.

What I found, to my surprise, was a consensus: Although illegal immigration remains a genuine problem, both the stock and the flow of illegal aliens in the work force has been reduced since the GAO completed its study in 1981.

To understand the significance of this funding for us in the United States requires a detour into the recent immigration policies of the two countries. Beginning in the early 1960s, German and French employers were permitted unlimited access to foreign workers. Indeed, the government actually encouraged and participated in the recruitment of foreign workers.

By 1973 -- the year U.S. Senator James O. Eastland killed employer sanctions the first time -- German and French employers in a broad cross section of the economy were learning the benefits of using foreign workers. The magnitude of the flow of workers was very large indeed. The combined native populations of the two countries was less than half that of the U. S. in 1973. In the decade previous, net legal immigration was more than twice as large, with total foreign born population approaching eight million.

Then the Arab oil embargo triggered a recession. The recruitment of foreign workers was suddenly cut off.

The situation in Europe at that time was similar in certain respects to that in the United States when the Bracero program -- which allowed U. S. farmers to freely recruit Mexican workers -- was terminated in 1964.

As in the U. S., employers had discovered that aliens are a very desirable work force; they will accept low status, dirty jobs ungrudgingly and at lower pay than native workers would demand. What immigration experts call the "push" factors -- poverty, population growth, unemployment -- grew at least as fast in Turkey and Northern Africa as they did in Mexico or the Caribbean.

As in the U. S., the governments elected not to try stemming illegal immigration by controlling the border. The reasons are both practical and geopolitical. The French border and port authorities observe over 800,000,000 entries each year, the Germans a like amount. And the West Germans cannot legally turn back anyone leaving East Germany. (Nor does the East German government control visitors bound for West Germany. There have been charges in the press that East German officials have actually encouraged such trafficking.)

The politicians in European countries approach immigration in a crabbed intellectual, moral, and political posture, as do politicians in the United States. America has the Statue of Liberty. Germany has the Holocaust. And France has Colonialism. Consider, for example, that if a French citizen wants to visit the United States, he must first be approved by an official at the American Embassy and given a visa. There is no visa requirement for a foreigner from former French colonies in Africa to visit France.

Thus, we see striking similarities: an essentially uncontrolled border, employers with an appetite for docile foreign labor, growing populations in countries from which a migratory stream had been loosed, and political obstacles to strong government action.

While the situation contained these striking similarities (along, it must be said, with important differences), the outcome certainly was not. The U. S. story is well known. Some of the Braceros settled legally but the demand for alien labor outgrew the supply. Word spread among employers and the use of illegal aliens grew from agriculture in the early 1970s to every sector of the economy and every part of the country today.

In Germany, there are fewer foreign workers today than there were in 1973. The number of foreigners has grown by about 400,000 over that decade, a number made up mostly of children, some of whom were allowed to come and join their parents and others who were born in Germany. (In Germany, unlike the U. S., citizenship derives from the parents.)

In France, the data are not as good, but there was clearly a sharp decline in legal immigration. A recent study puts the net increase in the foreign population at 500,000 for the past ten years. This cannot be precisely compared to Germany, as children born in France to alien parents are French citizens, and thus not included in the figures for the alien population.

In the years immediately following the sudden cessation of foreign worker recruitment, employers in both countries began to hire illegal aliens. It became a major political and economic issue, taken up by the International Labor Organization (a joint body of labor, business and government leaders from around the world). After a thoroughgoing debate, the ILO recommended employer sanctions -- penalties on employers who hire illegal aliens -- which were adopted in both Germany and France in the late 1970s.

The initial fines were low (about $350 per worker in France), and there were many loopholes in enforcement. In Germany, for example, labor contractors (referred to as leasing agencies) were exempted from the law, and became the prime source of illegal alien workers.

Perhaps more important, policing illegal aliens was a new experience for the governments of both countries. Prior to that time, their immigration officials were engaged largely in counting immigrants who were welcome, and they had little institutional experience with regulating them. And in France the law had no support at all from judges who often treated employers as if they were clever and resourceful to have found a way around the law! Responsibility to enforce employer sanctions in each country was spread in a confusing way among labor investigators, state or national police forces, and the immigration authorities.

Thus it is not surprising that the GAO investigators, who arrived just four years after employer sanctions were first adopted, found them working less than perfectly. However, officials in Germany and France vigorously challenged the GAO's conclusion that there was no deterrent effect in these early years. They believe that the imposition of sanctions helped to deter the sort of widening in the pool of employers using illegals which we experienced in the U. S. "We would have drowned in a sea of illegals without sanctions!" exclaimed one high official in the German Bundesgreitz (Border Patrol).

Officials in both France and Germany do concede that even if the initial halting efforts may have deterred some employers, they did not go far enough. Perhaps the best evidence that the governments in Europe did not agree with the pessimistic assessment of the potential of employer sanctions is what they chose to do. After five years of experimentation, each government responded. Fines were increased in Germany to a maximum of DM100,000 (about $40,000); 25,000 francs (about $3,000) in France.

In France, a special ministry was set up to coordinate federal, state and local enforcement activities -- the Mission de Liaison Interministerielle pour la Lutte Contreles Trafics de Main-d'ouvre. Under the creative leadership of Denis Moreau, the Mission began a careful campaign to educate judges and prosecutors to the importance of the new law, and also began to build support in the nation's press for vigorous enforcement by selectively prosecuting some particularly outrageous offenders, all of which is beginning to have its desired effect. A lawyer in a smallish Paris firm offered the opinion that it would be very difficult for an illegal alien to get a job from any of his clients in a "regular job." A few jobs as babysitters, personal servants, or a one-week period of temporary employment might be available, but beyond that "the potential fines are simply too heavy," not to mention the potential adverse publicity and lawyers fees! If it is for a full-time job, it is her opinion that employers in France ask and make sure that the person applying for the job is legal.

When I read her the finding of the GAO report ("No Deterrent Effect") she expostulated "This is not true now . . . if it ever was."

In France, employers face a possible prison term up to one year and administrative fines of 25,000 francs (about $2,750) per worker.

The Germans have recruited a new force of specially trained investigators to aid in enforcement, and changes in the law have earned cooperation between the Ministry of Interior and the Labor and Tax authorities, both of whom have records with which to ferret out violators.

You see Germans in jobs which "no German would do" ten years ago, jobs in construction, for example.

Roger Bohning, a careful researcher who has observed the situation in both France and Germany, confirms what government officials in both countries think: They have not eliminated illegal immigration. But it has been reduced significantly in scope and size, and sanctions were the key.

The Europeans are reluctant to lecture us on immigration policy, as they view the very existence of clandestine migration as evidence that their own has failed. But when pressed, their advice is simple: Don't expect employer sanctions to totally eliminate illegal immigration. Don't expect them to work without a serious commitment to enforcement. But don't expect your immigration law to work so long as employers are free to hire illegal aliens.

Senator SIMPSON. Thank you very much, Roger. Very thoughtful as usual from your group.

Now Paul S. Egan, who has testified before me as chairman of the Veterans Affairs Committee a time or two. Nice to have you here in a new role, Paul.

Mr. EGAN. Thank you very much, Mr Chairman.

We would like to echo the remarks of FAIR and express our gratitude for your courage, I suppose, in continuing with this issue and introducing this legislation and, in fact, having made some adjustments in the legislation to accommodate those of us who have some very strong feelings about the subject of amnesty for illegal aliens.

In the first place, the Legion has taken the view that workable reform must encompass several integrated policy steps, and integrated is the keyword there. You cannot do several things without having done some other things as well.

In order to control illegal immigration, it will be necessary to significantly augment the enforcement arm of the INS. In order to address the problem of those millions of illegals already in the country, two steps must be taken. They must include penalties against employers knowingly hiring illegals and a verification system capable of giving employers a means to distinguish between eligible and ineligible workers or job applicants.

Importantly, each of these steps must be taken together. One without the other will lead to failure of an effort to remove the job incentives that draw illegals into the country.

It is unwise to threaten employers with civil or criminal penalties for firing illegals without providing employers a verification means necessary to comply with the law. For some, this constitutes some form of intrusive internal passport and is therefore antithetical to the basic principles of individual freedom and privacy. These same critics also raise the spectre of totalitarianism laying just across the horizon. We take that seriously, but on close examination find them wanting and made for alarmist reasons.

We acknowledge a worker identification system to be strong medicine. However, we believe the seriousness of the illegal immigration problem in this country warrants a strong antidote.

Critics of employer sanctions often make the argument that employers, not intending to hire illegals, fearing sanctions will discriminate against foreign appearing or sounding job applicants. These critics would probably be correct if sanctions were imposed without also providing for verification. With sanctions and verification, however, the nation may very well take a long step forward toward eliminating discrimination in the workplace against foreign appearing and sounding individuals.

Our position on overall immigration reform is well known to you, just as yours is well known to us. We are encouraged by the provision in S. 1200 to predicate amnesty on the findings of a Presidential Commission that employer sanctions are working to stem the flow of illegals into the country. Although we oppose amnesty in any form, if Congress is intent on granting amnesty, we offer a suggestion. Should a Presidential Commission report amnesty to be a favorable policy choice, we suggest the report be referred to the House and Senate Judiciary Committees and the House and Senate Foreign Relations Committees. Assuming the two committees of each chamber agreed to recommend amnesty, we believe it appropriate to require favorable approval of specific resolutions to that effect by the full membership of both Chambers.

Our reason for offering this proposal respects the fact that immigration is not a domestic issue alone. Clearly there are serious foreign policy implications associated with any immigration policies this nation adopts. This is as true of the policies adopted to address illegal immigration as it is of the policies adopted to address legal immigration. The case for the Foreign Relations Committee involvement in the immigration reform debate is all the more poignant given the Nation's current deep concerns with the fate of several nations in Central and South America and the consequences that fate might hold for our southern neighbor, Mexico.

Today our open border immigration policy provides Mexico with a safety valve, tapping off the potential unrest of poverty stricken Mexican citizens who journey north in search of employment. Those arriving and staying in the United States, legally or illegally, constitute a major source of economic foreign aid due to the income earned here and sent there to family members left behind.

Given the relief our immigration policies provide Mexico, it may be appropriate to fashion our reform policies in a manner such that they can be used as a lever to encourage policy choices by Mexico that are favorable to both this country and Mexico alike. Permitting greater foreign investment in the interest of building a dynamic economy is one example. Adjusting legal immigration levels of Mexicans seeking entry into the United States in the interest of encouraging United States/Mexican democratic solidarity in opposition to Soviet/Cuban influence in Central America is another example.

Before concluding, Mr. Chairman, I would like to say one further thing, that the focus of the proposal in S. 1200 to assess the workability of employer sanctions to stem the flow of illegal immigration is an important one, but I think it is equally important to consider the advisability of that commission making some assessment of how well employer sanctions are working to create an outflow of the current indigenous illegal population, a population, in Congressman Scheuer's word, that "crashed" the border and were "uninvited."

Thank you.

[Prepared statement follows:]

PREPARED STATEMENT OF PAUL S. EGAN

Mr. Chairman and members of the subcommittee, The American Legion appreciates this opportunity to present its views once again this year on the critically important subject of immigration reform. In light of the disappointing failure of the Congress to reach an agreement last year on reform legislation before the end of the Congressional Session, we commend your dedication to resolve this issue by reintroducing new legislation, S. 1200, this year.

Before discussing the particulars of what we believe to be a solution to the problems of both legal and illegal immigration, there are a few general comments that must be stated and understood. This nation must regain control of its borders in order to stem the flow of illegal aliens, if for no other reason, in order to restore the public's confidence in the government's resolve to control the nation's destiny by implementing policies that protect national interests. As with illegal immigration, legal immigration must ultimately be reformed for the same reasons even though S. 1200 eschews the legal immigration part of the overall reform equation.

For its part, The American Legion has taken the well considered view that workable reform must encompass several integrated policy steps. In order to control illegal immigration it will be necessary to significantly augment the enforcement arm of the Immigration and Naturalization Service (INS). In order to address the problem of those millions of illegals already in the country, two steps must be taken. These include penalties against employers knowingly hiring illegals and a verification system capable of giving employers a means to distinguish between eligible and ineligible workers or job applicants. Importantly, each of these steps must be taken together. One without the other will lead to failure of the effort to remove the job incentives that draw illegals into the country.

In our view, employer sanctions without tamper proof worker identification will make enforcement impossible. Indeed this is precisely the experience of several nations and several states within our own country that have attempted to curb illegal populations by adopting employer sanction laws alone. Moreover, it is unwise to threaten employers with civil or criminal penalties for hiring illegals without providing employers with the verification means to comply with the law.

Though there are still some who disagree with the concept of employer sanctions as a remedy for illegal aliens, there is a general consensus, both within and without government, that employer sanctions should be adopted and can work to solve the problem. We agree with that consensus, but wish to emphasize the importance of verification.

In that regard, given the ease with which documents of all kinds can now be counterfeited, the only prudent decisions on verification must entail distribution of tamper proof (as tamper proof as possible) worker identification to all individuals eligible to work in this country. For some this constitutes some form of intrusive internal passport and is, therefore, antithetical to basic principles of individual freedom and privacy. These same critics also raise the specter of totalitarianism laying just over the horizon. The American Legion takes these assertions seriously, but on close examination finds them wanting. Were this country disposed to totalitarianism, it would have become so long ago. Today most Americans already carry numerous nationally identifiable cards. Just a few of the most common examples are credit cards, drivers licenses, bank cards, social security cards, majority cards and so on.

We acknowledge a worker identification system to be strong medicine. However, we believe the seriousness of the illegal immigration problem in this country warrants a strong antidote. With the understanding that an effective identification system would require time to implement, we suggest use of telephone verification of existing work eligibility documents pending a phase-in of a secure card identification system.

Critics of employer sanctions often make the argument that employers, not intending to hire illegals, fearing sanctions will discriminate against foreign appearing or sounding job applicants. These critics would probably be correct if sanctions were imposed without also providing for verification. With sanctions and verification, however, the nation may very well take a long step forward toward eliminating discrimination in the workplace against foreign appearing and sounding individuals. This is because employers could be reasonably certain of the work eligibility of all job applicants irrespective of nationality.

Mr. Chairman, we support the provisions of S. 1200 dealing with employer sanctions. However, we recommend that specific provisions be added to the legislation to strengthen employer sanctions by incorporating a tamper proof identification and verification system.

One other critical aspect of the illegal immigration issue that concerns The American Legion is the granting of amnesty to those illegals already in the country. Being an organization of wartime veterans, we are familiar with the general policy questions and consequences surrounding the issue of amnesty. The nation's most recent experience with amnesty was when draft dodgers during the Vietnam conflict were permitted to regain entry into the country with little or no penalty. Today we can see by the tens of thousands having failed even to register with selective service -- apart from military duty itself -- that there has been a worrisome erosion of respect for the law. Beyond the disrespect of the selective service registration law, there seems an accompanying and foreboding disregard for the legitimacy of our government's sovereign right to raise an army in its own defense.

We believe it is entirely appropriate to compare the consequences of amnesty for draft dodgers with the possible consequences of amnesty for illegal aliens. The gravity of what is at stake transcends even the legitimate concerns of many that fairness requires forgiveness. To answer affirmatively the question of whether or not virtually millions of illegals should be granted amnesty is to concede not only a failure of law enforcement in the past, and probably the future, but also a failure of national will to enforce the law.

If as citizens we voluntarily comply with laws and thereby lend dejure legitimacy to the State's right to govern, just as surely the State has a solemn defacto obligation to enforce the law. This is true whether referring to littering, robbery or immigration. At issue with amnesty is nothing less than the question of preserving the fabric of trust between those having given permission to be governed by law -- the American people -- and those responsible for husbanding the public's trust -- the government of the United States. In short, amnesty constitutes a departure from basic government obligations to the governed to protect the sanctity of sovereign borders and carefully fashion public policies which promote social well-being without exposing the body politic to undue chaos.

To those who believe amnesty is the only means of addressing the indigenous illegal alien population problem, we respond by saying employer sanctions and worker identification will work to encourage illegals already in the country to leave on their own without police roundups, and at little or no cost to the government. No one suggests as an answer to overcrowded prisons that they should be emptied so that we might start with a clean slate. Yet this is the same "one time amnesty" logic that underlies proposals for amnestying illegals already in the country.

Mr. Chairman, our position on overall immigration reform is well known to you just as yours is well known to us. We are encouraged by the provision in S. 1200 to predicate any amnesty on the findings of a Presidential Commission that employer sanctions are working to stem the flow of illegals into the country. Even though we still oppose amnesty in any form for any reason, if the Congress is intent on granting any amnesty we offer a suggestion. Should a Presidential Commission report finding amnesty to be a favorable policy choice, we suggest the report be referred to the House and Senate Judiciary Committees and the House and Senate Foreign Relations Committees. Assuming the two committees of each chamber agreed to recommend amnesty, we believe it appropriate to require favorable approval of a specific resolution to that effect by the full membership of both chambers before implementing any amnesty.

Our reasons for offering this proposal respects the fact that immigration is not a domestic issue alone. Clearly there are serious foreign policy implications associated with any immigration policies the nation adopts. This is as true of the policies adopted to address illegal immigration as it is of the policies adopted to address legal immigration. The case for Foreign Relations Committee involvement in the immigration reform debate is all the more poignant given the nation's current deep concerns with the fate of several nations in Central and South America and the consequences that fate might hold for our southern neighbor, Mexico.

Unless we are terribly mistaken, the United States has a vital interest in assuring the political stability of Mexico. In that nation, with its burgeoning population of overwhelmingly poor, the vista between extraordinary wealth and abject poverty is enormous. Without affirmative steps being taken, by a Mexican government widely criticized for being slow to root out corruption, to build an economic infrastructure capable of employing Mexcio's citizenry, Mexico may soon become vulnerable to serious social unrest in a climate conducive to Marxist-Leninist ideological appeal.

Today our open border immigration policy provides Mexico with a safety valve, tapping off the potential unrest of poverty stricken Mexican citizens who journey north in search of employment. Those arriving and staying in the United States legally or illegally constitute a major source of economic foreign aid due to the income earned here and sent there to family members left behind.

Given the relief our immigration policies provide Mexico, it may be appropriate to fashion our reform policies in a manner such that they can be used as a lever to encourage policy choices by Mexico that are favorable to both this country and Mexico alike. Permitting greater foreign investment in the interest of building a dynamic economy is one example. Adjusting legal immigration levels of Mexicans seeking entry into the United States / Mexican democratic solidarity in opposition to Soviet / Cuban influence in Central America is another example.

In that regard, Mr. Chairman, we note that S. 1200 fails to address the issue of legal immigration. It may be that omnibus immigration legislation like that fashioned in each of the last two Congresses is too wide ranging and thus too divisive for the Congress to adopt at one time. Nevertheless, the issue of legal immigration must be settled. Already, as the most generous nation on earth, this country admits more foreign nationals than any other. We believe this generosity can and should be continued, but as with illegal immigration, control must be restored. For that reason we believe the most sensible policy to adopt would place an annual ceiling on the total number of immigrants allowed to enter the country. Such a ceiling, to be meaningful, should include refugees as well as preference categories for family members of immigrants seeking family reunification. These categories of immigrants are currently exempt from existing ceilings and have the effect of rendering the ceilings meaningless.

As indicated at the outset, Mr. Chairman, The American Legion appreciates the opportunity to present its views to the Committee and we look forward to working with you toward a constructive resolution to this nation's immigration problems.

Senator SIMPSON. Thank you very much.

Now Jerry Jasinowski, please.

Mr. JASINOWSKI. Thank you very much, Mr. Chairman.

I am Jerry Jasinowski, executive vice president of the National Association of Manufacturers, which has about 13,500 member corporations, large and small, high technology, low technology, in every State.

NAM members are, of course, affected significantly by this bill, but the larger policy concerns is why we are here.

I have a longer statement, Mr. Chairman, which I would like to have submitted in the record, and abbreviate my remarks.

Senator SIMPSON. Without objection, so ordered.

Mr. JASINOWSKI. S. 1200 attacks the problem in a realistic manner through a combination of enhanced border enforcement and civil penalties for employers who knowingly hire illegal aliens. By diminishing the incentives to come to this country, that is, eliminating the possibility of work, the number of aliens willing to risk illegal entry is bound to decrease.

This bill will have an onerous impact on some employers and the recordkeeping will be difficult for all. But the NAM is willing to support this bill and work enthusiastically for it for several overriding public policy concerns, Mr. Chairman.

First, the question of the quality of our borders and the ability to police those is an issue which is going to grow in political and economic importance in this country, and you are ahead of your time even though the political significance is not yet fully appreciated. We are at a point where the integrity of our borders has not only significant social effects but is increasingly having an important economic effect. And, therefore, the bill is key to dealing with that issue.

Second, as Congressman Scheuer stated very well, and you have too, once people arrive here illegally, they get the worst of the lot. They do not get good jobs. Their children are not educated. They are shoved off to ghettos. They become a social problem in a secondary way and are themselves abused, and that is not the way this country operates in terms of equal treatment for people within its borders.

Third, Mr. Chairman, and I think the thing that is not yet fully appreciated most is the tremendous and growing economic effects of the movement of illegal aliens into this country, effects having to do with decreased tax revenues, increased burdens on public resources, the aggravation of the unemployment problem for people nationwide, the extent to which the minority population in this country is deprived of some of the benefits that they could have from a bill like this, and the deterioration of the quality of the work force which is, in many ways, a major way by which the United States will continue to grow, prosper, and compete. So, for all of those reasons and others, Mr. Chairman, although we are troubled by some of the burdens, the burdens seem to us to be less than the benefits associated with these public policy aspects that I have indicated, and we will work enthusiastically for the bill.

There are several areas of the bill that we feel could be improved, and I will just very briefly mention those for the committee's information.

The employer penalties should be looked at in terms of their being as realistic and fair as they can be. One of the changes you might want to consider, Mr. Chairman, and members of the committee, is raising the floor of the penalties so as to exempt a larger number of small firms from the impact of those penalties. And I think that does not really decrease the effectiveness at all. But I think when you are getting down to a $100 penalty, I would question the significance of that kind of penalty itself.

Second, I think that we would like to see the pattern or practice definitions under the bill somewhat better defined. Again staying with the question of penalties, we think it would be important to look carefully at the entity that is impacted by the penalties. If every—well, the bill says it is unlawful for a person or other entity to knowingly hire a unauthorized alien. Since many of the NAM companies have multiplant operations in numerous States, it would be unfair to hold the entire company responsible for each violation. We believe that a violation should be counted against the individual plant or physically separate subdivision of a company.

The other changes that we have, Mr. Chairman, go to the need to clarify the definition under the paperwork requirements and to look very carefully at the possible need for waivers for students in scientific skills under shortage. And beyond that, Mr. Chairman, I think that the rest of my statement speaks for itself, and I would be happy to respond to questions in the period following.

[Prepared statement follows:]

Prepared Statement of Jerry Jasinowski

Mr. Chairman and members of the subcommittee, I am Jerry Jasinowski, the executive vice president and senior economist for the National Association of Manufacturers. I am here today representing the NAM's 13,500 member corporations, large and small, located in every state. NAM members employ 85 percent of all workers in manufacturing and produce more than 80 percent of the nation's manufacturered goods. On behalf of all our members, I would like to thank you for the opportunity to testify on S. 1200, the "Immigration Reform and Control Act of 1985."

Mr. Chairman, your efforts in the 99th Congress to once again tackle the difficult and controversial issue of immigration reform are highly applauded. We cannot as a nation continue to ignore the increasing numbers of illegal aliens flowing into our country. The social and economic problems endemic to a society where as many as 500,000 illegal aliens flow over the borders each year warrant decisive legislative measures. The United States is one of the most generous countries in the world in opening its doors to legal immigrants. But unfortunately the lure of jobs and opportunity make this nation all too appealing to thousands and thousands of aliens, who chose not to pursue legal channels for entering this country.

Obviously we cannot and should not errect an iron wall around our southern and northern borders. S.1200 attacks the problem in a realistic manner -- through a combination of enhanced border enforcement and civil penalties for employers who knowingly hire illegal aliens. By diminishing the incentive to come to this country -- that is eliminating the possibility of work -- the numbers of aliens willing to risk illegal entry is bound to decrease. While the burden on employers to check all employees to determine their citizenship or work status will be onerous, the NAM membership is willing to support them for the good of our U.S. workforce, businesses who rely exclusively on legitimite workers and our communities.

We would also like to applaud the bill sponsors for recognizing the budgetary concerns in any legalization program. As the debate develops, there are some specific concerns from the manufacturing sector we would like you to keep in mind.

I. Employer Penalties for Hiring Unauthorized Aliens

We are pleased that this year's bill calls only for civil penalties, not criminal penalties, for employers who hire illegal workers. The penalties are stiff, and will undoubtedly serve as a strong enough deterent to any business who knowingly hires illegals. Criminal penalties seem inappropriate, since it would be extremely difficult to determine the individual within a company who should be held responsible for hiring the illegal alien.

S.1200 takes the much more appropriate penalty approach. The provision calls for mandatory penalties of $100 to $2,000 for each unauthorized alien for the first offense, $2,000 to $5,000 per unauthorized alien for second offenses and $3,000 to $10,000 for each unauthorized alien for persons engaging in a pattern or practice. These are much heftier civil penalties than those contained in last year's bill. Although NAM members can live with these burdens, we would urge the subcommittee to consider giving the judges more flexibility by lifting the floor, allowing for penalties up to $2,000 for the first offense, up to $3,000 for the second offense and up to $10,000 for repeat violators. This would allow the immigration judge to determine the degree to which an employer violated the intent of the law and structure penalties accordingly. It would also provide for varying penalties depending on the size of the company and the nature of their offenses. This intent of the request is to decrease the financial burden of the fines on smaller firms when appropriate.

NAM would also like to see "pattern or practice" defined. Does it mean that in every instance where an employer is found guilty for a third time, a "pattern or practice" is assumed? This appears unclear from the bill.

A major concern with the penalty provision has to do with the lack of definition of "entity." The bill says it is "unlawful for a person or other entity" to knowingly hire an unauthorized alien. Since many of the NAM companies have multi-plant operations in numerous states, it would be patently unfair to hold the entire company responsible for each violation. NAM believes that a violation should be counted only against the individual plant or physically separate subdivision of a company. Failure to limit the scope of coverage could have far-reaching impacts on large corporations. It is entirely feasible that a company with more than a 100 operations could have two violations within a two week period as a result of poor practices of plants at either end of the country. Yet, the company itself may be a good-faith employer who diligently attempts to hire only authorized workers. NAM hopes the subcommittee will remedy this situation by narrowly defining "entity" to comply with these practical concerns. Corporate liability should be separate and distinct from liability imposed on the corporation's facilities for their willful violations.

Another deficiency in the penalty provision has to do with the obligation of an employer to continually verify the status of their employees. There are inumerable situations which could arise -- outside of the employer's knowledge -- changing the status of a noncitizen permitted to work here. For instance, the Immigration and Naturalization Service could revoke a person's work permit prior to its experation date. Some limitation as to the obligation of employers to continually check on employment status once a person is hired should be outlined in the legislation.

II. Paperwork Requirements

S.1200 removes the mandatory business paperwork requirements in last year's Senate bill. We generally approve of this approach. The bill presumes an employer guilty if an illegal alien is found on the payrolls absent verification and recordkeeping. The bill states that the presumption of guilt can be overcome by other "clear and convincing" evidence. This will undoubtedly be a tough evidentiary hoop. NAM hopes that the record will reflect what the Congress would consider other "clear and convincing" evidence so employers will have better clarification about their legal requirements in defending such a case.

NAM has always sought specificity in what type of identification would be appropriate in determining whether a person is qualified to work in the United States. The bill has done a good job in detailing the identification which will qualify a person for work. We agree that any checking of identification must be done uniformly, so that a particular nationality will not be exposed to discriminatory employment screening.

III. Legalization Program

S.1200's program to legalize aliens living in the United States prior to 1980 seems rooted in common sense and with an eye to budgetary constraint. We recognize that it is not good for our society to have as many as 3.5 to 6 million illegal aliens living in the shadow of fear and without the protections afforded citizens of this country.

However, any massive nationwide legalization program should be done so that it does not result in an uncontrollable financial burden on either the states or the federal government. We applaud the attempt to grapple with these budgetary concerns, and hope that as the debate evolves, the committee will seek to keep implementation costs to a minimum.

IV. Creation of New Form of Discrimination

The NAM believes employers should have the right to give job priority to U.S. citizens as long as they do not discriminate based on sex, national origin, race, or religion. Unemployment rates still are looming around 7.2 percent. Many of our country's citizen's are unable to obtain much-needed work.

Any attempt to create a new form of discrimination based on non-citizenship status, or alienage, should be rejected. We hope should this issue be raised, as it was during last year's debate, you will focus on the need to first give job priority to U.S. citizens of all colors and nationalities.

We also would urge the rejection of any provision to create a new federal agency to prosecute claims of discrimination based on a new form of discrimination based on non-citizenship.

V. Student Waivers for Critical Skills and Management Trainees

S.1200 does not address the issue of giving waivers to academia, business and industry to employ nonimmigrant students who possess specialized or critical skills that are in short supply in the United

States. We think it is an issue which warrants consideration. Industry does not take employment waivers lightly at a time when we need to control immigration. However, NAM believes that on a case by case basis students which have exceptional abilities in the area of business expertise should be considered for waivers where they possess skills which are unable to be readily obtained by U.S. citizens. Areas of expertise which are in short supply might include some particular science and engineering fields.

NAM also urges you to consider giving waivers to nonimmigrant students who might need training in a U.S. plant prior to returning to their native countries or countries of last residence to work. The waiver would be sought so that multi-national companies could, on a case-by-case basis, seek permission to train a nonimmigrant here for a few years after graduation before they are transferred to their home country.

VI. Summary

In summary, NAM support S.1200. It is a streamlined bill, which will undoubtedly serve as a major step in getting control of our nation's borders. Industry stands ready to participate, in conjunction with all sectors of our society, to ensure that our immigration laws are workable, enforceable and effective.

Senator **Simpson**. Thank you very much. It is very helpful testimony and consistent with your past support of various proposals of this nature. And I appreciate it.

Senator **Grassley**. Mr. Chairman, could I have a statement put in the record and then I wanted to ask cosponsorship of S. 1200.

Senator **Simpson**. Indeed. Please proceed.

Senator **Grassley**. I am just going to insert in the record because I have to go to another meeting.

Senator **Simpson**. It will be entered in the record without objection. And I thank you very much, Chuck.

[Statement follows:]

STATEMENT OF SENATOR CHARLES E. GRASSLEY BEFORE THE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY, JUNE 14, 1985

Mr. Chairman, I would like to commend you once again for your patience and diligence in trying to achieve some control of immigration in this country. We all have realized that this is an extremely difficult issue and also one with extremely important consequences.

Mr. Chairman, no one has worked harder on this issue than you and I share your disappointment that we were not successful in getting a bill to the President's desk last Congress.

I am hopeful and confident that we will proceed expeditiously this Congress and approve S. 1200. I am especially pleased to see included in S. 1200 the establishment of a legalization commission. This definitely compliments my concerns that we ensure illegal immigration is under control prior to institution of a major legalization program.

I commend the able chairman for including that provision and would ask that he add me as a cosponsor to this critically needed legislation.

Thank you, and I look forward to working with you again on this issue.

Senator **Simpson**. The final witness on this panel, Dr. Cutler.

Dr. **Cutler**. Thank you, Mr. Chairman, Senator Grassley.

I am Rupert Cutler, executive director of the Environmental Fund, a national membership group in Washington, DC. I would like to submit our detailed testimony for the record and summarize orally.

We see immigration reform as a key environmental quality issue.

As awareness has grown of the linkage between population size and quality of life in America, many of our major national conservation organizations have taken on population size as an issue that will be given high priority on their conservation action agendas. That is relatively new within the last few years. I can speak with knowledge about the National Audubon Society, the Sierra Club, and others who have acknowledged the relationship between population growth and environmental quality.

The burden of my testimony this morning will be to establish the linkage between immigration and population size in the United States and the effect of population growth on the quality of life in the United States.

Given our extraordinary per capita consumption of such environmental services as food, water, energy, and paper products, each additional person's demands result in measurable added pressure for intensified resource development and in more environmental pollution. There is a cost associated with either ignoring or trying to minimize the environmental impact of one more toilet, one more car, more coal burned for electricity, more marginal land cultivated for food, more old growth forest cut for lumber, and the use of more toxic chemicals to control forest and agricultural pests and diseases. One more house adds to the urban sprawl spreading over the Nation's prime farmlands.

This kind of testimony usually is heard by other committees in this building, such as the Energy and Natural Resources Committee, the Environment and Public Works Committee, and the Agriculture Committee. I am giving it here this morning because immigration today is the source of half of our Nation's population growth. The fertility rate of American women today is less than replacement, and going down as more women enter the work force and delay or decide against having children. As a result, immigration is becoming the main source of U.S. population growth, and overpopulation locally is creating major environmental problems.

The United States does not need more people. It needs to protect and enhance the quality of the lives of the people already here, such as the 13.8 million children living in poverty in this rich country today.

Protecting the quality of our lives should be the object of government. A greater quantity of lives, regardless of quality, seems to be the end result of current policies, through failure to control our borders and penalize employers of illegal aliens, both of which encourage millions to take the chance to come to the United States and stay illegally.

The environmental, social, and economic consequences of permitting the United States to have the highest population growth rate of any industrialized nation in the world, through admitting more immigrants each year than all the rest of the countries of the world combined, are evident on both the local level and at the national level. Locally, depending on which environmental resource is in shortest supply, the problem may be persistent air pollution or surface water shortages or groundwater contamination, or a shortage of waste disposal sites, or the conversion of local truck gardens and orchards to subdivisions and shopping malls. Nationally, it is represented by sharp increases in total soil erosion, acid rain, and the cost of pollution abatement programs generally, and by sharp decreases in key wildlife species and the productivity of major estuaries such as the Chesapeake Bay.

Therefore, the Environmental Fund, established to spread word of the 1972 Rockefeller Commission's conclusion that the Nation needed a stabilized population, strongly supports passage of S. 1200. Its triggered amnesty provision gives us pause, because amnesty, in the absence of a statutory limit on annual legal immigration to the United States, could lead to a 1990's population bomb, the result of so-called chain migration. An alternative would be to change the registry date from 1948 to perhaps 1973 or 1975.

But we enthusiastically endorse its employer sanctions provision, which we view as essential if we are to begin controlling illegal immigration.

We applaud the stiff civil penalties in the bill, but recommend that criminal sanctions be applied to persistent violators.

And we ask that an annual limit on immigration—an immigration cap or ceiling of the kind included in previous recent Senate immigration reform legislation—be added to the bill as you mark it up and report it for floor action.

Again, amnesty without a ceiling could spell big trouble for this country, as millions of relatives of the newly naturalized citizens make their way to our shores to share our limited resources.

In this connection, we suggest that the responsibilities of the proposed Legalization Commission be expanded to include the duty to determine the demographic result of any amnesty program it might recommend, and the impact of that demographic change on the quality of life for future generations of Americans.

In that connection, Senator Simpson, your proposed periodic review of immigration levels and its impact on society contained in earlier bills was a great idea in our opinion, and we urge that it be included in this legislation. We all need a better grip on what immigrants do and where they go. In fact, we may need the old Rockefeller Commission to look again at this and, in particular, at the effect of immigration on our population, 15 years after its initial report.

Mr. Chairman, I thank you for the opportunity to testify. I will be happy to respond to your questions.

[Statement follows:]

PREPARED STATEMENT OF DR. M. RUPERT CUTLER

Mr. Chairman, members of the committee:

Thank you, on behalf of The Environmental Fund, for this opportunity to testify on S. 1200, The Immigration Reform and Control Act of 1985. This is the third consecutive Congress in which major immigration reform legislation has been introduced by the Senator from Wyoming, and we commend you and your colleagues for your diligence, perseverence, and fairness in confronting this complex, controversial, yet critically important issue.

The Environmental Fund (TEF) was established in 1972 to study and educate the public as to the impacts of U.S. population size and growth on our environment and economy. We are unique among environmental and population organizations because our work is focused on one objective: the adoption and implementation of a U.S. population policy calling for a stabilized population that will assure that the number of people in our country is in balance with the sustainable productivity of our environment. Current U.S. immigration policies have made the United States population the fastest growing of any industrialized nation on earth.

The Demographics of Immigration

Immigration is fundamentally, a population issue. The desire of immigrants to leave their homeland is often rooted in the poor economic, environmental, social and political conditions that result from rapid population growth in their native lands. With vast regions of the globe plagued by serious problems associated with uncontrolled population build-ups, particularly wide-spread unemployment, it is no wonder that the United States, with the world's greatest "jobs engine", is the point of destination for most immigrants, legal and illegal.

But immigration, especially if illegal immigration is running in the neigborhood of 1 million or more per year, has also become a demographic nightmare for the United States. If immigration continues at its present pace, the U.S. will face the same over-population-related problems now so obvious in the countries from which the immigrants are coming. It would be irresponsible of our government to allow that to happen.

Net immigration is the source of close to half of U.S. population growth. In 1984, the annual rate of natural increase in the U.S. (the number of births minus deaths) was 1.6 million. Annual legal immigration is approximately 600,000 per year (594,131 in FY82 is the the most recent official figure from the INS). To this must be added illegal immigration--an unknown number, but 1 million a year is not an unreasonable guess. In other words, Mr. Chairman, the U.S. population is growing in the neigborhood of 3.2 million a year, an annual growth rate of 1.3 percent. If this growth is sustained over time, the U.S. population, now 238 million, will double in 54 years.

If the United States is to reach the desirable goal of a stabilized population in the near future, it is imperative that the problem of uncontrolled immigration across our borders, be addressed effectively and soon.

It is crucial that the U.S. act promptly, because our immigration-related problems will only get worse with the passage of time. Rapid population growth is continuing in the sending regions, particularly Latin America and Asia, which will further exacerbate the problems there of unemployment, poverty, environmental degradation, social unrest, and political instability, that already encourage many to leave.

According to the Population Reference Bureau's 1985 World Population Data Sheet, Latin America--now numbering 406 million people--is growing at a rate of 2.3 percent per year, which equates to a population doubling time of just 30 years. Throughout this region commensurate increases in the size of the labor force and annual new job requirements will occur. I raise this example, not only to underscore the necessity of sound immigration controls, but also to address the charge that this legislation should be held hostage until it, somehow also dissolves the economic disparity between the U.S. and Latin America. Attempting to burden this bill with the responsibility for correcting the world's economic inequalities, would sink it without a trace by requiring referral to nearly every committee on Capitol Hill and adding an immense price tag, beyond practicality at this point in our budget-making history. The United States Government's primary responsibility is to protect the interests of the American people, and S. 1200 will do that.

U.S. Population Projections

Future U.S. population growth will hinge on the interplay between fertility rates and immigration levels. To clarify this relationship, I wish to draw the attention of the committee to Appendix A, which depicts a range of possible demographic scenarios for the U.S. The table of U.S. population projections for 1990-2030 uses three different fertility scenarios and five different assumptions for annual net immigration to present a range of 15 population scenarios for the United States. Depending on the assumptions chosen, the U.S. population in the year 2000 could be as low 252 million and growing slightly, or as high as 305 million and growing rapidly. By the year 2030, the range is anywhere between 248 million and 425 million--a difference of 177 million people--and the actual number will be determined in large measure by your actions in revising and reporting this bill.

The National Interest

The Environmental Fund was founded in 1972, the same year that the President's Commission on Population Growth and the American Future (also known as the Rockefeller Commission) declared that stabilization of the U.S. population was in the national interest:

"After two years of concentrated effort," the Commission's final report stated, "we have concluded that, in the long run, no substantial benefits will result from further growth of the nation's population, rather that the gradual stabilzation of our population would contribute significantly to the nation's ability to solve its problems. We have looked for, and have not found, any convincing economic argument for continued population growth. The health of our country does not depend on it, nor does the vitality of business nor the welfare of the average person."

If there is no economic justification for continued population growth, there certainly is no environmental justification. Each additional resident requires his or her share of our clean air, water, soil, food, fiber, energy, and space, and diminishes the per-capita reserve each of us is dependent upon. I am not suggesting that a stabilized U.S. population will, by itself, remedy all the environmental ills facing this country. In the absence of population stabilization, however, it will be more difficult to develop and implement sound environmental policies, and we may find those policies that have been adopted falling short of the mark in terms of success. In this sense, population is the ultimate environmental threat, and without sound demographic policies, instituting truly adequate environmental policies will be nearly impossible.

The Demographics of the Immigration Reform and Control Bill

Uncontrolled immigration is fundamentally a population issue, and legislative proposals to deal with this problem are therefore population policy proposals, which brings us to S. 1200.

Every major element of this bill carries demographic implications. All the key questions in this debate, whether illegal immigration, legal immigration, amnesty, or temporary foreign workers, involves the presence or absence of hundreds of thousands, if not millions, of people in this country. Thus, the precise form this bill takes will determine its demographic impact on the United States.

Illegal Immigration and Employer Sanctions

The key issue in this debate is what to do about illegal immigration. The employer sanctions provision, the heart and soul of this bill, is absolutely essential if the U.S. intends to stop illegal immigration. A fair-minded Select Commission recommended a prohibition against the knowing hiring of illegal aliens and, quite simply, no other viable alternative has emerged from years of debate. Implementation of employer sanctions would close one of the most glaring loopholes on the books--the so-called "Texas Proviso" which says that hiring an illegal alien does not constitute "harboring", which is illegal.

Fair yet firm employer sanctions are necessary because jobs, and the difference in wages paid in the U.S. and in other countries, particularly Mexico, constitute an undeniable magnet encouraging people to come into U.S. illegally. Some critics charge that sanctions deal only with the "pull factor" of American jobs. However, it would be unrealistic, in my view, to suggest that this bill or any other single piece of legislation could adequately address the complex conditions that encourage outmigration from many developing countries--the so-called "push" factors. As recent experience tells us, enacting employer sanctions alone can be a staggering political challenge.

The Environmental Fund strongly supports the employer sanctions provisions of S. 1200. The strengthening of civil penalties through a steep series of graduated fines will hit the unscrupulous employer where it counts: in the pocketbook. We would prefer to see criminal sanctions for pattern and practice violators, although I have been informed by staff that they believe violation of a "cease and desist" order could land that employer in jail.

Verification of Employment Eligibility

Inextricably linked to the concept of employer sanctions is the question of employee verification, or how the employer determines that a prospective worker is in the country legally. S. 1200 does not require employers to maintain records showing that workers have been screened for employment eligibility. However, employers who do keep such records will have an affirmative defense against prosecution for violations of employer sanctions.

The verification provisions in S. 1200 may, indeed, prove to be workable, although we would prefer to see a universal system of verification requiring that all employers to check the status of all new workers. Universal verification could be readily implemented through a computerized call-in telephone system, in much the same way that millions of credit card transactions are logged every month in this country. The two great advantages of a universally applied, telephone verification system are 1) reduced paperwork for U.S. businesses and 2) reduced fear of employment discrimination among minority Americans.

Triggered Legalization

In a departure from recent immigration bills, S. 1200 proposes to defer the amnesty program until a Presidentially appointed "Legalization Commission" determines that illegal immigration across our borders and the hiring of illegal aliens by U.S. employers has been substantially reduced. The Commission also must find that amnesty itself will not exacerbate the problems of illegal entry and illegal hiring.

Mr. Chairman, from a political as well as a policy perspective, triggered amnesty is a big step in the right direction. Because of the demographic implications inherent in the amnesty program, an issue I will address in a moment, triggered amnesty strikes us as less desirable than updating the Registry date (in lieu of an amnesty program). Nevertheless, triggered amnesty conforms to a recommendation of the Select Commission on Immigration and Refugee Policy (by a 16-0 vote) and is preferable to past legalization plans directly tied to implementation of employer sanctions. Consideration of a worst case scenario underscores this point:

The worst case scenario would involve unsuccessful sanctions, inadequate funding for border and interior enforcement, and implementation of amnesty. Because, under this scenario, illegal entry and the hiring of illegal aliens continues, amnesty itself would constitute additional encouragement of illegal immigration. The message would be: not only are jobs available but so is legal residency and citizenship if several million people can get into the U.S. by first entering illegally.

Immigration Ceiling Needed

While the "triggered amnesty" plan precludes this scenario, it still raises serious demographic concerns because the plan does not include a ceiling on annual legal immigration and because of the phenomenon known as "chain migration." I know you encountered much resistance from colleagues on the House side to last year's ceiling provision. But the Senate twice approved by wide margins, immigration bills which contained a legal immigration ceiling, and a similar amendment on the House floor last year received a respectable 168 votes.

Furthermore, there is strong public support for a generous but firm overall limit on annual legal immigration to the U.S. A 1980 Roper Poll showed 80 percent of the American public in support of a limit on legal immigration of 400,000 or less. Efforts to cap legal immigration levels are immediately labeled "restrictionist", but even if the U.S. did limit legal immigration to 500,000 per year, the United States still would take in more people for permanent resettlement than all the other nations of the world combined. The legal immigration issue is a classic balancing exercise--American tradition and the desires of immigrants on the one hand, and public opinion, national interests, and the "carrying capacity" realities of the late twentieth century on the other.

Depending on how many aliens take advantage of an amnesty program, assuming that it goes forward, the matter of "chain migration" may become an important factor in terms of the volume of future legal immigration. In this regard, the January 1, 1980 legalization cutoff date is a marked improvement over last year's conference committee version, because it limits the size of the amnesty pool from which "chain migration" will originate.

"Chain migration" is the process by which legalized aliens, perhaps millions of legalized aliens, once citizenship is attained, will be able to petition for admission of unlimited numbers of immediate relatives. They, in turn, once they become citizens, will seek to admit their immediate relatives.

Because the number of legalized aliens and the number of their relatives to be admitted in the future is unknown at this time, we can only speculate on a range of demographic scenarios. Appendix B shows a range of impacts from 2 million legalized aliens seeking to admit one relative each to 8 million legalized aliens admitting four relatives each. In the Appendix B table the ripple effect on top of the initial amnesty pool is between 2 and 32 million future immigrants. Some observers may choose to use a wider or more narrow chain migration range, but the bottom line is that amnesty will inevitably and unnecessarily involve a leap into the demographic unknown.

Given the uncertainties about the ultimate amnesty cutoff date, how many eligible aliens will come forward, and what the cumulative impact of "chain migration" will be, The Environmental Fund believes that prudence warrants the inclusion of a generous and flexible ceiling on legal immigration to balance this package of employer sanctions and amnesty.

Temporary Foreign Workers

Another area of potential demographic concern involves the guest-worker program. Last year we heard from labor representatives following House passage of the Panetta-Morrison amendment, that as many as 500,000 guest workers might be admitted to the U.S. under this expanded program. Numbers this large cannot go unnoticed. Therefore, any plan to expand the guest worker program should receive the most rigorous scrutiny. Mr. Chairman, our primary concern with this provision is that it not develop any leakage and become an additional conduit for illegal immigration.

Conclusion

This issue is laden with demographic pitfalls with serious environmental consequences. I urge the members of this panel to keep in mind the potential population impacts of illegal immigration, legal immigration, amnesty, guest workers, and remember the aggregate impact of the legislation on the future population of the United States, and thus on the quality of life of future generations of our fellow-countrymen.

I have submitted, along with my testimony, a copy of an Environmental Fund publication entitled "Saving the Dream--Quality of Life in America." I encourage members of this committee to peruse this summary of our concerns regarding population growth and its environmental consequences.

Thank you.

APPENDIX A

TEFdata:

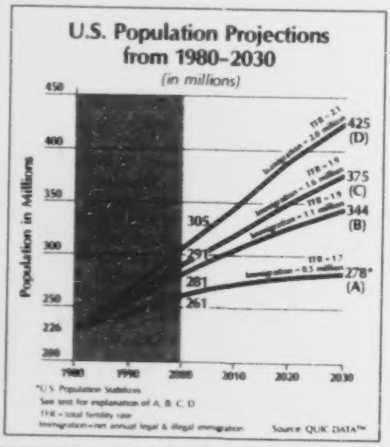
Number 18

March, 1985

TEF's U.S. Population Projections for 1980-2030

In 1972, the Rockefeller Commission on Population and the American Future declared that "no substantial benefits would result from continued growth of the nation's population." Despite this warning, the United States has become the fastest growing industrialized nation in the world with little chance of reaching population stability without a concerted effort. There have been enough examples from other countries in the news recently to make us consider what effects an increase of a possible 68 million people in the next 15 years may have on the United States.

The figure below illustrates four different scenarios that—depending on which one we as a society choose to follow—will largely determine our futures. Each line of the figure has two variables that change: total fertility rate and annual net immigration. Changes in these two variables account for most of the changes in our population growth. Note that only the scenario for Line A will bring us to a stationary population by the year 2030, and *none* will bring us to stability sooner.



*U.S. Population Stabilizes
See text for explanation of A, B, C, D
TFR = total fertility rate
Immigration = net annual legal & illegal immigration

Source QUIC DATA™

Line A is the most optimistic scenario because it will yield the least population growth. Today, our total fertility rate is approximately 1.9. That means that each childbearing woman in the U.S. is having an average of 1.9 children in her lifetime. Line A suggests the possibility of reducing that average figure to 1.7 children per woman.

Line A also suggests that we have only 500,000 total immigrants each year. Our rate today is much higher, but if adequate immigration reform legislation is passed we might achieve the 500,000 figure. As can be seen, even with this lean, "best case" scenario, the population of our country will grow from 226 million in 1980 to 261 million by the year 2000 and 278 million by 2030, at which point population growth would stabilize.

Lines B and C represent a range between which our present growth lies. Currently, our total fertility rate is close to 1.9 and our level of annual net immigration is probably running between 1.1 million people a year to 1.6 million. (The uncertainty of the immigration estimate occurs because there is no accurate count of the *illegal* immigrants that are entering the U.S. in ever-increasing numbers.) At our present rate of growth, we would have between 281 and 291 million people in the U.S. by the year 2000, and between 344 and 375 million in less than 50 years. That means, at our present level of growth, we may add the equivalent of five Californias in most people's lifetimes. The possibility of population stabilization with these scenarios does not occur even by 2080, which is as far in the future as we have made projections.

Line D, the final projection, varies the numbers again to present another scenario that is entirely possible, given present conditions in the world and in our country. If the baby boomlet continues and expands, our fertility level may rise to 2.1, which is basically replacement level but on a base of the current large number of women of childbearing age. In addition, if the surge in illegal immigration

Total Fertility Rate	1990	2000	2010	2020	2030
Annual Net Immigration = 0 million					
1.7	243	252	255	255*	248
1.9	246	259	268	274	276*
2.1	249	265	277	289	296
Annual Net Immigration = 0.5 million					
1.7	247	261	271	277	278*
1.9	250	269	284	298	307
2.1	253	275	294	313	328
Annual Net Immigration = 1.1 million					
1.7	252	273	290	304	313
1.9	254	281	304	326	344
2.1	258	287	314	342	367
Annual Net Immigration = 1.6 million					
1.7	255	283	307	327	342
1.9	258	291	320	350	375
2.1	262	297	331	367	399
Annual Net Immigration = 2.0 million					
1.7	259	291	319	345	366
1.9	261	299	334	369	400
2.1	265	305	345	386	425

Source: The Environmental Fund QUIC DATA II (resident population) projections as of 25 April 84

*U.S. Population Stabilizes

continues unchecked by any kind of enforceable immigration controls and employer fines for hiring illegal workers, we may very well see our net immigration level reach 2 million a year. There is anecdotal evidence from field staff of the U.S. Border Patrol and the Immigration and Naturalization Service that we may be at that high level already.

This final scenario would yield an increase in U.S. population of almost 80 million people between 1980 and 2000. That is the equivalent of more than three present-day Californias — our most populous state — in just 20 years. And then, looking to the future, we would grow to 425 million by 2030, almost 200 million more people than we had in 1980. The population of our whole country in 1969 was 200 million, and now we are facing the possibility of seeing twice that many people living in the same amount of space with the same or a depleted natural resource base within our lifetimes.

The implications of this incredible rate of growth have not been recognized by many otherwise clear-thinking people in this country. But, in fact, a rapidly growing population will radically change "the American way of life." Crowding will increase, standing in lines and making reservations long in advance for limited numbers of outdoor recreation areas will become common, ecological diversity will be lost, taxes and insurance premiums will climb, prime farmland will continue to be lost to urban sprawl, and water will become a fighting issue in some parts of the country. All of these problems and more will be associated with continued U.S. population growth.

Fortunately, we do not have to sit back and accept as fact that our children will be faced with the crises that such population growth will bring. If we act responsibly now by limiting our fertility to the 1.7 that is postulated in the low scenario — and even more importantly, if we take as a serious obligation the enforcement of sound, new immigration laws that will eliminate illegal immigration and keep legal immigration to a level consistent with the supplies of natural resources that constitute our country's human "life support system" — then the future we bequeath to our children and theirs may indeed be bright.

Judith Hinds (demographic
assistance by Lisa C. Olson)

The Environmental Fund believes that every major problem facing the United States as a nation and humanity as a whole becomes more difficult to solve as population increases.

APPENDIX B

TEFdata:

Number 13 March, 1984

Amnesty for Illegal Aliens: A Population Bomb?

Congress may soon pass legislation which could, in ten years, add 30 million people to the U S population The pending Mazzoli Immigration Reform and Control Act (H.R. 1510) would give permanent resident status to all persons who arrived in this country before January 1, 1982 The Environmental Fund supports immigration reform, but questions the wisdom of granting blanket amnesty to illegal aliens because of the long term demographic impact

Between six and twelve million illegal immigrants, if not more, are already living in the United States Government agencies expect 36% to 64% of these will apply for amnesty This means that between 2.2 and 7.7 million people could receive amnesty and thereafter become permanent legal residents under the Mazzoli bill

Under present immigration law, permanent residents may apply for citizenship after 5 years Once they become citizens, they are free to bring in their immediate relatives—spouses, minor children, and parents They may also petition for the admission of their brothers, sisters, and adult children Upon entry to the U S., these relatives are classified as permanent legal residents and may apply for citizenship after five years Once they are full citizens, they too may bring in spouses, minor children, and petition for admission of other relatives This process, known as "chain migration", could add tens of millions of people to our population before the year 2000

Chain Migration: Growth in U.S. Population Because of Amnesty

Number of illegal aliens coming forward for amnesty	Number of Family Members Brought in After Citizenship is Obtained			
	1 Family Member	2 Family Members	3 Family Members	4 Family Members
2 million	2 million	4 million	6 million	8 million
4 million	4 million	8 million	12 million	16 million
6 million	6 million	12 million	18 million	24 million
8 million	8 million	16 million	24 million	32 million

The table above shows how many new immigrants might enter the U S if the broad amnesty proposed in the House of Representatives passes and is followed by chain migration The table assumes that between 2 and 8 million illegal aliens will come forward for amnesty, gain citizenship after five years, and bring in from 1 to 4 immediate family members

Let us assume that the actual number of family members brought in by illegal aliens given amnesty is mid-way between 2 and 32 million, the lowest and highest estimates on the above table This leads to the conclusion that about 18 million immigrants will enter the U S legally as a result of amnesty That is equivalent to adding enough people for a state the size of New York

The United States cannot afford to allow such a massive influx of people, especially just as our economy is beginning to recover from a decade of recession The additional population would further

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burden our already over-extended social welfare programs and increase unemployment, making life more difficult for millions of Americans.

Besides being unfair to U.S. citizens, an amnesty for illegal aliens rewards people who knowingly violate U.S. laws and punishes those who abide by them. Millions of potential immigrants are waiting patiently for a chance to come to the United States legally. Should they not be given preference over illegal aliens? If Congress approves the amnesty provision in the Mazzoli bill, it will send a clear message to potential immigrants world-wide: it is far easier and faster to become a U.S. citizen by immigrating illegally than it is to wait for legal approval.

Another problem with the proposed amnesty is that it sets a dangerous precedent. The House bill calls for relatively weak sanctions against employers who hire illegal aliens. Unless these sanctions are strengthened, they will not be effective: illegal aliens will continue to be hired. Believing that they might be included in a future amnesty, and knowing they will still be able to find jobs, illegal aliens will continue to pour into the United States.

An alternative to the sweeping amnesty outlined in the Mazzoli bill would be to delete this provision and move up the Registry Date from 1948 to January 1, 1973. The Registry Date is an immigration law provision used by Congress to periodically grant permanent legal resident status to illegal immigrants. At present the Registry Date includes only those illegal immigrants who have resided in the U.S. since June 30, 1948. By updating this existing mechanism, only those illegal aliens who have firmly established themselves in the United States would be allowed to remain.

The Environmental Fund advocates immigration reform and commends the effort that Congress has made towards that goal. However, we believe that granting blanket amnesty to illegal aliens is inconsistent with the main objective of the Mazzoli bill, which is to control immigration. An amnesty would greatly increase, not decrease, immigration by setting off chain migration. The United States simply cannot afford the social, economic, and environmental degradation that will be caused by the addition of tens of millions to our population.

The Environmental Fund believes that a citizenry informed about the effects of population growth on our economy, society, and natural resource base will support a national population policy with strong immigration reform as a natural step towards that goal.

Senator SIMPSON. Thank you very much, and we will go to some questions now. I think I may bounce around, but I may come back in the form of the agenda.

To Roger Conner, I am interested in your testimony discussion about the Texas proviso, that it was never intended to protect the employer who knowingly hires an illegal alien but that, according to, I believe, the testimony of Senator Kilgore in 1952, it was intended to protect only the inadvertent, unknowing hiring of an illegal alien.

Could you elaborate a little bit on what you think the significance of that may be and what relevance it may have in today's circumstances, realizing that people continue to testify before me, that all we need to do is enforce existing laws. And then I say the existing law says it is legal to hire an illegal, but it is illegal for an illegal to work. But how that can be anything good to administer as a lawyer or a law enforcement official, I would like to have your thoughts.

Mr. CONNER. We went back and looked, Mr. Chairman, at the history of the Texas proviso in part because of some recent court cases where employers who have hired illegal aliens have been successfully prosecuted under that section of the law, and that sort of perked up our interest in going back. And these court cases made it clear that while the employment of an illegal immigrant per se may be exempted by the Texas proviso, that when the employer goes beyond mere employment, does something to encourage the person to be concealed, to come, to stay, things that employers are doing regularly today, without the sanction, the courts have made it clear that is not protected by the Texas proviso.

There now have been a number of such successful prosecutions where the courts have rather emphatically said the Texas proviso should be interpreted as narrowly as the courts can for the reason you said.

So we tracked back the legislative history and there was, in fact, a great squabbling over this Texas proviso on the floor, and the Senator who introduced the language of the Texas proviso defended it, as we say, by saying this is only to protect the unwitting employment of illegal aliens. The legislative history is by no means absolutely clear on this point because, unfortunately, there was an effort to amend the Texas proviso, the language that says the "normal incidents of employment shall not be deemed to constitute harboring." Some well-meaning people probably should have left well enough alone, but they lost that vote and thus the legislative history is scrambled.

But looking at that legislative history, the courts have said it is clear that an employer who does anything more than mere employment by shielding, hiding under a table, saying on a loudspeaker here comes the INS, assisting in any way in bringing the illegals into the country, a host of things that, as we believe many employers are now regularly doing, appear to be, according to these court cases, violations of the statute. And it is certainly consistent with our view of the legislative history that such actions would be violations of the statute.

So there is probably a narrower exception in the Texas proviso than has been widely believed by employers.

Senator SIMPSON. You indicate that your personal observation and inquiry with regard to employer sanctions in Europe, as to the effectiveness of employer sanctions, their workability, possible aspects of discrimination, what other countries did. Did you visit countries other than Germany?

Mr. CONNER. Germany, France, Switzerland, and England. Of course, England does not have employer sanctions. It was only Switzerland, Germany, and France, in which I was able to talk in detail about their statutes and how they are working.

Senator SIMPSON. What did you find with relation to the possibility of discrimination based on employer sanctions, especially in a multiracial nation such as France?

Mr. CONNER. This was the most fascinating part of my entire trip because France—many people do not realize there are many French citizens who are black or who are from Northern Africa. They are different ethnically and racially. France is a far more multiracial country than most people realize and, thus, they have with the employer sanctions precisely the problem that has been alleged here of employers refusing to hire a French citizen who is, for example, black.

And I talked, Mr. Chairman, to people from across the political spectrum. None of them ever brought up discrimination, and so I brought it up to them. I said have employer sanctions caused this kind of problem? Most of them looked at me sort of puzzled, and said it has never come up. And then they would think about it and go through the history of their experiences. And every single person, and I must have talked to a dozen different people who would be in a position to know, including a writer who had just finished a book of racism against immigrants in France, a leftist writer who had written a wonderful book with the title "The Hospitality of the French, a Diatribe Against Racism in France," and he said that employer sanctions in no way have created the kind of problem of employers turning people away just because they look or sound foreign.

So, to me, the most encouraging discussion of the whole trip was that employer sanctions has been tried in a country that ought to have the problem if it would occur, and it just has not come up.

Senator SIMPSON. Very interesting.

Just very swiftly, what method do the European employers usually use to verify work eligibility?

Mr. CONNER. In France, there is what is known as the carte d'identité which is like a Social Security card except it has a picture on it, and in Germany there is a worker identification card that each person is required to show to an employer before they can be employed. In Germany, there is an interesting method used there is something like a call-in system that has been discussed here, because in order to get signed into the health insurance program, the person, the validity of their German equivalent of a Social Security number has to be checked, and they cannot be signed into the health insurance system unless there is an OK. So there is sort of a cross-check built in. But they also have an identification system.

I must add, however, that the legal immigrants, of which there are many in France, have documentation that is not nearly as high of quality as the carte d'identité. Yet, notwithstanding that they have not experienced a discrimination problem, the use of the identification system has surely assisted in alleviating potential problems.

The other thing they had is every person who applies for a job is routinely checked. And I talked to people, to workers, to ask whether this was a source of resentment for them. And their response was, well, we do not want our Social Service systems, which are all built on these identification systems, to be destroyed by people falsely getting into the system. They did not object.

Senator SIMPSON. Very interesting. I appreciate that very much.

Paul Egan, I do appreciate your reiteration of the importance of the triad of enforcement, employer sanctions, secure worker verification systems, and increased enforcement.

How might we best achieve more public support for an important part of that triad, the secure worker verification system? Do you have any thoughts on that?

Mr. EGAN. I am not so sure that the problem is in convincing the public.

It is my understanding that the public generally already supports a secure identity card. I think the public generally realizes the severity of the problems that we are facing. So it may not require a big selling job to get the approval of the public for a tamperproof as possible identification system.

Senator SIMPSON. I think there is some truth to the fact that the public, just as Mr. Conner discussed, knowing that they can protect their jobs and their systems of support, whether it be social security or whatever it may be in the country of their origin, they do a better job of protecting that system if they know there is a secure verification system. And indeed no one is seeking a national ID card, although that is an argument that does enter the discussion at times. We particularly emphasize by specific language that not be the case. So perhaps we will work more on congressional activity rather than public activity there.

Mr. EGAN. In that regard, it is also surprising to note a recent poll finds the public is satisfied with the performance of Congress.

Senator SIMPSON. It just shows you about polling, does it not, and the inaptness of the science. [Laughter.]

Mr. EGAN. If a selling job needs to be done, I think it would simply require explaining to people, as has been said so many times before, that the number of nationally identifiable cards that people already carry with them makes the question of an internal passport relatively moot.

Senator SIMPSON. That I think is very true. You draw an analogy between amnesty for draft dodgers and amnesty for illegal aliens, and yet I think that the existence of that Texas proviso again was a strong incentive for illegal aliens to come here whereas there was no law encouraging draft age men not to register. I try not to tie them together because amnesty, I think, in the Vietnam war situation was a devisive and unpopular thing, and I often use the word amnesty with regard to illegal immigration and I just do not tie them together. And I would like your thought there.

Mr. EGAN. We are concerned with the public policy implications of a government saying to a public—from a political-philosophical standpoint—that has granted the government legitimacy by agreeing to obey its laws, that it is willing to repudiate those laws regardless of what effect that action might have for the general public's respect for the law. That is our point, and we think that by the tens of thousands of people who have not registered with Selective Service that there is a connection between this amnesty and the amnesty that was offered to the Vietnam-era draft dodger.

Senator SIMPSON. Just swiftly, what is your thought or what do you foresee in the near future if we do nothing to reform our current immigration laws?

Mr. EGAN. We certainly would be the last organization to say let us do nothing to reform immigration.

Senator SIMPSON. I say what do you think would occur if we were to do nothing? You have been very supportive, the American Legion, but what do you see if we were to do nothing and were unable to respond legislatively?

Mr. EGAN. The consequences of doing nothing in terms of the public's lost respect for the law, would probably be greater than a wide open amnesty.

Senator SIMPSON. I thank you very much.

Mr. Jasinowski, I want to say to you in an issue where the long-term national interest is so often subverted to the short-term national interest, and that happens all the time in this fascinating arena, but it certainly happens more than the percentage would dictate in immigration reform. Everyone is looking for how do I save me in this process, save my method of doing business, all the rest of it, short-term special interests. It is very heartening to have the support of virtually now the entire business community. Your people have been very supportive consistently and I have appreciated that.

Now we have the Business Roundtable, the NAM, the U.S. Chamber, the National Federation of Independent Businesses, all supporting immigration reform, and that is important, I think, for the American public to realize, for this legislation admittedly, this bill does admittedly place necessary burdens upon the employers of the United States. I admire that very much. That is a tough one and you have embraced it.

Mr. JASINOWSKI. Let me briefly respond and say I think this has political significance in the sense that the same groups for the most part are united behind the current efforts of the Senate to reduce the budget deficit and the impact of both the deficit and immigration are long-term cancer like erosions of the body politic, which makes them very difficult to deal with in the short term politically, but which make them extraordinarily large national issues. And in both cases the business community has been harmed by the bill. But in these cases, and I do not mean to imply we do it all the time by any means, in these cases the problem seemed sufficiently large and long term that the business community is very concerned.

Senator SIMPSON. I think justifiably so, as a long-term negative indeed. Your testimony suggests that your interpretation of the bill requires an employer to continually verify an alien employee's immigration status.

Could you elaborate on that a little bit? That is not the intent of the legislation.

Mr. JASINOWSKI. My impression was that an employer did have to continually verify the status in that the whole recordkeeping area was one in which, although it had been put or the identification system was one in which there had to be fairly constant going back and saying you know, this fellow is, in fact, all right. If that is not the case——

Senator SIMPSON. I think it would be helpful for you to know that we do require here to verify an alien's status at the time of the hiring, and it also makes it unlawful to continue to employ the alien once the employer learns that the alien is illegal. But it does not require the employer to continually verify or monitor the alien's status or to even actively seek information about the alien's status after the date of hiring.

Mr. JASINOWSKI. I appreciate that, Mr. Chairman. That is helpful.

Senator SIMPSON. I think it would be of interest to you.

You mention the word "alienage" for the first time in my recollection in these hearings. It arose certainly in the conference committee and was one of the things that ground things down pretty well, discrimination on the basis of alienage. It is an issue that received very little attention in any hearing of any subcommittee of either the House or the Senate until suddenly it sprung into its short life last fall.

I would be interested if you have any further views on that subject of alienage discrimination and on the possibility of a new Federal antidiscrimination agency.

Mr. JASINOWSKI. Yes, sir, Mr. Chairman.

We would oppose a new agency. We felt strongly before that that was a mistake, and any effort to create a new form of discrimination based on noncitizenship status really ought to be rejected. We hope that this issue will not be raised again in that, as you have in your bill, we will continue to focus on the need to give first priority to U.S. citizens of all colors and nationalities.

Senator SIMPSON. Just a final question.

The question raised in the past is that could employers get into the habit of regarding penalties arising from employer sanctions as simply another cost of doing business? This in view of a sharp increase in the penalties provided and the reason that first offense is not less than $100 nor more than $2,000. For example, that person of Texas proviso fame, the person who really just says, you know, boy, I did not know this.

The second one, however, is $2,000 to $5,000, and the third offense is $5,000 to $10,000, and that is per illegal undocumented person.

Do you believe that is certainly more than a cost of doing business? Would you concur?

Mr. JASINOWSKI. I think those penalties are too high, and I think that, as I attempted to indicate in my remarks, there ought to be more flexibility with respect to how a judge can apply those penalties, particularly so that small firms and other judgments can be brought to bear so that, you know, it seems to me if a law said up to $2,000, for example, that would give more discretion and leeway to judges.

I might say, Mr. Chairman, I also would disagree strongly with the view that we ought to make these criminal penalties. I am amused and saddened that every time we get a national problem that business is involved in, someone wants to make it a criminal penalty. It seems to me this is a massive problem. The business community is inclined to go very far in terms of policing, as evidenced by the widespread support for this effort, which is not going to be fun for business, and then for someone to say we ought to have criminal penalties, I think, is really extreme given those facts.

Senator SIMPSON. Certainly the criminal penalty aspect here will only come in, if at all, when there has been perhaps a contempt of court or something of that nature after the third offense. We should be more concerned during the first three stages of the civil penalty tier.

I thank you very much.

Dr. Cutler, I really am very fascinated with what you were saying, and it is important that a person like you is saying it, a person with an extraordinary record of environmental soundness, even though I have not always agreed with you when you were in the previous administration. But you had the guts to go ahead and do what you set for yourself as a goal. I admire that from anyone.

But this new awareness of environmental groups is a very important part of this. It is almost like a new awareness, a new awakening as to the fact that you can come here and testify, or to my other Committee on Environment and Public Works, or other committees, you can testify about S_2 and acid rain and clean water and safe-drinking water, and then suddenly suddenly realize what you have here is a human situation of so many footprints in the United States in places by people who unfortunately do not understand the nature of zoning laws and the density laws. And if they did, many times they would not be able to do much about it because they are here illegally. What an extraordinary boiling along that is going to take in the United States for those who labor for a clean, safe, sound environment, and that is not that I fear so many footprints in the United States, that is not the issue. But if you have people here illegally, they are not sensitive to issues of environmental legislation. They have no reason to. They are here for one reason, and the critical reason of trying to find a way to care for themselves and their children, and we know that, but I think it is something to be aware of. And it is good to know that groups such as yours are doing that. I appreciate that very much.

I would say, too, could you give us some idea in your studies through your group as to what the population of this country might become in 10 or 20 years if we continue to do nothing in the area of immigration and if, for example, we continue to admit 500,000 legal immigrants, which is what we do now. I think we should continue to take 500,000 legal immigrants, and if we get legalization as soon as we can, and I hope we do that, but then we are going to have to readdress the whole issue again of legal immigration because of the applications that were made for immediate relatives, family reunification.

Would you have some projections of that and any projections as to what the nearer term consequences of doing nothing would be?

Dr. CUTLER. Yes, Senator. And I hope when the hearing record is printed, the TEF data sheets attached to my testimony will be reproduced because they provide our population projections for the years 1980 through 2030, and answer your questions with considerable specificity.

For example, if there were a half million immigrants net per year and fertility remains about the same as it is today, or 1.9 children per woman of child bearing years, the United States population at the turn of the century will be approximately 269 million, or approximately 30 million more than today.

If we take no action, and illegal immigration continues at the rate it is thought to be occurring today, that is, between 500,000 and 1 million per year, in addition to the 600,000 legal immigrants, that is an annual net immigration of 1.1 to 1.6 million Our estimates are that the population of the United States will be between 281 and 291 million just in the next 15 years, or some 50 million more people in the United States than are presently in this country, the equivalent of two more Californias with all the jobs and services that they require.

Senator SIMPSON. Do you have any views as to what might be an ideal population growth rate for the United States and what immigration's role in that rate might be?

We were quite startled, I think is the word, on the Select Commission as we dealt with the issue to find there is no population policy in the United States. Other countries, certainly in Europe, with limited borders and large populations have turned their attention to what is a, quote, "suitable population for their environment." They may not reach it, but at least they discuss it. Here we do not even discuss it. Nobody is concerned about it. The ZPG at one time occcasionally discussed that, but there is nothing, nothing in the official agencies of the Federal Government as to a, quote, "ideal population of the United States." That is not an elitist statement. It is a realistic statement like you plan and do your planning in any other county or State or whatever.

Do you have any thought on that?

Dr. CUTLER. The basis of our concern and our desire for a stabilized U.S. population as soon as possible is the notion of the carrying capacity. And as a rancher, you are familiar with the notion that you can only run so many cows and calves on a certain acreage.

Senator SIMPSON. I do not ranch. That is not one of my things.

Dr. CUTLER. Your friendly neighbor ranchers——

Senator SIMPSON. Yes.

Dr. CUTLER [continuing]. Are familiar with the notion of carrying capacity: Only so many animals can exist on a continuous basis on a certain piece of land. The same is true of human beings in an area the size of the United States. We do not know what the human carrying capacity of the United States is. But to be on the safe side, to be sure that we have enough soil and water and other resources on a sustainable basis to last us into the future, and based on the findings of the Commission on Population and America's Future, chaired by John D. Rockefeller III, which reported in

1972 that the Nation would be better off if the Nation's population were stabilized as soon as possible, we advocate a stable population soon.

The policy of the environmental fund would be to encourage an annual net immigration of zero, which means somewhere betweem 100,000 and 150,000 immigrants per year to match the number leaving the country each year. And if a fertility rate of 1.7 could be achieved rather than 1.9, a modest drop in the total fertility rate in the United States, a stabilized U.S. population could be achieved by the year 2010 at the population of 255 million. That is still 20 million more than we have today, but that, in our view, would be perhaps the best that we could hope for.

Now, on the other hand, as you have requested, if the net immigration were to be reduced to half a million per year and fertility was reduced to 1.7, we could hope to see a stationary U.S. population by the year 2030 of 278 million. If the fertility rate remains at 1.9 and half a million immigrants net are permitted to enter the country each year, the population will not become stabilized by the year 2030 and, in fact, it will be over 300 million and going up.

At the current rate of immigration into this country, it is conceivable that our population might reach 375 million by the year 2030.

So we have these choices. We have these policy options, and it would be safer in the long run to protect the sustainable capacity of our soil and our water and other resources, not to mention the more subjective judgmental values associated with the desirability of not being crowded, not being hassled, not having such huge cities running into one another, the question of having to make reservations, of waiting lines, of higher taxes per capita to pay for all the public services necessary to serve this additional population. The sooner we reach a stabilized U.S. population, the better.

Senator SIMPSON. I thank you very much, Dr. Cutler, and I want to assure you that that part of the record that you mentioned in your testimony is contained again in this bill where we will have reports on the issue of social services, foreign policy, and environmental qualities and the resources and the growth rate of the United States. I appreciate very much your testimony. It is very helpful.

On the next panel we have David Pingree, secretary of health and rehabilitative resources, National Governors Association. David, nice to see you again. And Janice Peskin, Prinicipal Analyst, Congressional Budget Office. Good to have you here.

Now, we would be very pleased to have your testimony, Mr. Pingree. It is always good to hear your views because you are on the firing line and I have always been interested in your thoughts. So please proceed.

STATEMENTS OF PANEL CONSISTING OF DAVID H. PINGREE, SECRETARY, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, STATE OF FLORIDA, ON BEHALF OF NATIONAL GOVERNORS' ASSOCIATION TASK FORCE ON IMMIGRATION AND REFUGEE ISSUES AND JANICE PESKIN, PRINCIPAL ANALYST, BUDGET ANALYSIS DIVISION, CONGRESSIONAL BUDGET OFFICE

Mr. PINGREE. Thank you, Senator Simpson.

I am pleased to be here today representing Gov. Bob Graham, chairman of the NGA Task Force on Immigration and Refugee Issues.

Let me begin by commending you for the outstanding work you have done in immigration reform. We appreciate your efforts and are committed to working with you once again, although I must say I would rather come back and work with you on another issue. But maybe we will get there some day.

The Nation's Governors recognize the need for immigration reform. Their policy statement stresses the following:

One, sufficient funding should be provided to the Immigration and Naturalization Service and other appropriate agencies to enforce the immigration law.

Second, employment of illegal immigrants should be prohibited, and the Federal Government should develop enforcement mechanisms that will minimize the administrative burdens on employers and do not discriminate against the employment of minority workers.

Three, if legalization is granted to illegal immigrants, the Federal Government must provide full reimbursement to State and local governments for all costs caused by the legalized program.

Four, the initiation of any legalization program should be delayed until the Attorney General of the United States or a legalization commission can certify to Congress that effective measures have been implemented to reduce illegal immigration substantially.

Five, trade and investment policy should be employed as a crucial element in reducing undocumented immigration.

Six, the President should be granted emergency authority to deal effectively with any unexpected arrival in the United States of large numbers of people seeking asylum.

Seven, a workable contingency plan should be in place addressing an immigration emergency, and the Federal Government should consult with affected States on the elements of this plan.

And, last, the exclusion and asylum process should be revised to provide for a fair and expeditious review of asylum claims.

The Immigration Reform and Control Act of 1985, S. 1200, introduced by you on May 23, is a positive step toward developing workable immigration reform. Some of the provisions in your bill regarding employer sanctions, increased resources to INS enforcement activities, and the delay of legalization until effective measures to reduce illegal immigration substantially have been implemented are issues which I am pleased you have addressed in your bill. However, the immigration reform bill could be strengthened further if provisions regarding Presidential emergency authority, contingency planning, and fair and expeditious asylum and exclusion procedures were also included. Most importantly, the Nation's Governors still are concerned over the reimbursement provision.

The Governors believe strongly that national immigration policies are a Federal responsibility and that financial liability for costs of any legalization program should be borne by the Federal Government as part of national, not local or State, responsibility. We believe that full reimbursement is the preferred method, but we will continue to work with you and members of your subcommittee on this in an attempt to reach a satisfactory solution to the reimbursement issue.

We are pleased that your bill this year has recognized and addressed some of our States' financial concerns. For example, the State legalization impact assistance grant in your bill does recognize Federal responsibility by targeting available funding primarily for reimbursing State and local costs for assisting legalized aliens. In addition, the provision allowing unspent funds in a given year to be used in the next year recognizes the difficulty States could have in addressing unexpected numbers of applicants. However, we are still concerned that the cap imposed in the bill may not fully address the reimbursement issue.

Because of the difficulty of estimating costs, the States have proposed that the Federal program be based on reimbursement of actual costs. This would assure funds being available, if needed, and also not exceed true expenditures. We do not believe an arbitrary cap would provide sufficient protection for State and local taxpayers.

In addition, the State impact assistance grant proposed in your bill would provide Federal assistance for State and local costs for only 3 years while legalized aliens would be ineligible for any of the Federal public assistance programs for 6 years, the period during which the Congressional Budget Office estimates costs to be the highest.

The Governors recognize, as do you, that legalization will result in additional costs to government at all levels. What the States seek is reimbursement for the additional costs which would result from legalization, particularly those costs that would result from Federal decisions concerning eligibility for Federal benefit programs. The States do not seek permanent protection from these additional costs. Instead, we ask for reimbursement during a fair and reasonable transition period. Such an approach recognizes that legalized aliens will become an increasingly productive component of our population and that longer term costs should be borne by both levels of government.

The Governors also are concerned with the assertion that State and local costs of services to aliens can be offset by taxes which are paid by such aliens. Available data on this issue are even more sketchy than any relating to cost estimates themselves. However, the few studies that have been done should serve to dispel this growing myth, including estimates by the Immigration and Naturalization Service.

Generally, the newly legalized aliens are expected to have income well below the average wage level in any given State. They are also apt to have larger size families and, as a result, make more intensive use of more expensive services, such as education, than the average non-alien family. The cost of services used, therefore, almost surely will exceed taxes paid. And we have examples in California where the cost is $2,000 per immigrant family more, and the estimates by INS, they also have similar figures.

The Governors are prepared to work with you once again to address the reimbursement issue. The States seek neither a windfall nor a shift of legitimate State costs to the Federal Government. The Governors appreciate the care with which this committee has approached this complex issue, and we look forward to continuing to work with you in finding a viable solution to solve our Nation's immigration and refugee problems.

[Statement follows:]

National Governors' Association

John Carlin
Governor of Kansas
Chairman

Raymond C. Scheppach
Executive Director

TESTIMONY

by

HONORABLE D. ROBERT GRAHAM

Governor of Florida

Chairman

NGA TASK FORCE ON IMMIGRATION AND REFUGEE ISSUES

before

SENATE JUDICIARY SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

June 18, 1985

Delivered

by

DAVID H. PINGREE

Secretary

Department of Health and Rehabilitative Services
State of Florida

HALL OF THE STATES · 444 North Capitol Street · Washington, D.C. 20001 · (202) 624-5300

Senator Simpson, Members of the Subcommittee, I am pleased to be here today representing Governor Bob Graham, Chairman of the NGA Task Force on Immigration and Refugee Issues. I will be addressing some of the concerns you have in your efforts to improve our nation's immigration policy.

Let me first begin by commending you for the difficult work you have done in immigration reform. We appreciate your efforts and are committed to working with you once again.

The nation's Governors recognize the need for immigration reform and as chairman of NGA Task Force, Governor Graham has worked very closely with you and Congressman Mazzoli over the past three years to seek a workable solution.

The Governors adopted policy positions in 1982 addressing some of the concerns that they have in the development of a national immigration policy. Their positions stress:

1. Sufficient funding should be provided to INS and other appropriate agencies to enforce the immigration law;
2. Employment of illegal immigrants should be prohibited, and the federal government should develop enforcement mechanism that will minimize the administrative burdens on employers and do not discriminate against the employment of minority workers;
3. If legalization is granted to illegal immigrants, the federal government must provide full reimbursement to state and local governments for all costs caused by the legalized program;
4. Initiation of any legalization program should be delayed until the Attorney General of the United States can certify to Congress that effective measures to reduce illegal immigration substantially have been implemented;
5. Trade and investment policy is a crucial element in reducing undocumented immigrantion;
6. The President needs emergency authority to deal effectively with any unexpected arrival in the United States of large numbers of people seeking asylum;
7. A workable contingency plan should be in place addressing an immigration emergency, and the federal government should consult with affected states on the elements of this plan; and
8. The exclusion and asylum process should be revised to provide for a fair and expeditious review of asylum claims.

The Immigration Reform and Control Act of 1985 (S. 1200) introduced by you on May 23 is a positive step towards developing workable immigration reform. Some of the provisions in your bill regarding employer sanctions, increase resources to INS enforcement activities, and the delay of legalization until effective measures to reduce illegal immigration substantially have been implemented are issues that Governor Graham has discussed with you in the past, and he is pleased that you have addressed them in your bill.

The immigration reform bill could be further strengthened if provisions regarding presidential emergency authority, contingency planning, and fair and expeditious asylum and exclusion procedures also are included. Most importantly, The nation's Governors still are concerned over the reimbursement provision.

The Governors believe strongly that national immigration policies are a federal responsibility and that financial liability for costs of any legalization program should be borne by the federal government as a part of National — not local or state — responsibility. We believe that full reimbursement is the preferred method, and we will continue to work with you and members of your Subcommittee in an attempt to reach a satisfactory solution to the reimbursement issue. Nevertheless, we are pleased that your bill this year has made a number of improvements in recognizing and addressing some of our states' financial concerns. For example, the state legalization impact assistance grant in your bill does recognize federal responsibility by targeting available funding primarily for reimbursing state and local costs for assisting legalized aliens. In addition, the provision allowing unspent fund in a given fiscal year to be used in the next year recognizes the difficulty states could have in addressing unexpected numbers of applicants. However, we are still concerned that the cap imposed in the bill may not fully address the reimbursement issue.

One of the problems in addressing the reimbursement issue is establishing actual cost figures. The Congressional Budget Office (CBO) has acknowledged this difficulty in its most recent cost estimate published in Februry, 1985. CBO admitted that their estimates are very "uncertain", and because of these uncertainties, actual costs of the alternative cost estimates could be - and I quote - "well above or below CBO's estimates". This dilemma is evident in the wide range of estimates being discussed during the past three years, ranging from the Office of Management and Budget (OMB) figure of $3.9 billion to Department of Health and Human Services' (HHS) $6.7 billion.

The CBO estimates reinforce our concern over a limit on the federal financial commitment based on national aggregate estimates. Such estimates do not take into account of the uneven distribution of the illegal population and the different public assistance programs among the states. As a result, they may not be able to fully assess the actual costs.

While we have emphasized the importance of state-by-state estimates, the Congressional Budget Office has not been able to provide such estimates, and the states themselves have been hampered by the wide range of alternative approaches under consideration.

Because of the difficulty of estimating the acutal costs, the state had proposed that the federal program be based on the reimburement of actual costs. This would have assured that funds would be available if needed, but also that they did not exceed true expenditures. We do not believe an arbitray cap could provide sufficient protection for state and local taxpayers.

In addition, the state impact assistance grant proposed in your bill would provide federal assistance to state and local costs for only three years, while legalized aliens would be ineligible for any of the federal public assistance programs for six years. A careful review of the CBO estimates reveals that most of the state and local costs resulting from legalization might, therefore, not be eligible for federal assistance. Those estimates show that state and local costs would be lower in the first three years and increase to much higher degree in the fourth and future years, at a time when federal reimbursement would stop altogether. We are concerned that states may be faced with unfair and unexpected share of the future burden.

The states appreciate your attempt to assist them in developing state statutes that would limit public aid for legalized aliens. The provisions may be of some assistance that an alien in temporary lawful residence status shall not be considered, to be permanetly residing in the United States under color of law for the purpose of state and local welfare assistance determination. However, we do not yet know if this provision would, in fact, be effective since federal courts have in many occasions required the states to provide assistance to aliens. In some cases that assistance has been mandated under state constitutions.

The substantial number of eligibility issues already in litigation make us uncertain as to how the courts eventually will interpret this provision. While states undoubtly will attempt to use the authority provided, we do not believe that limits on reimbursement should be based on the assumption that states will be completely successful in application of that authority.

The Governors recognize, as do you that legalization will result in additional costs to government at all levels, and finding a workable solution is not a easy task. We strongly believe that difficulty in addressing the reimburesement issue should not be construed as state refusal to bear and share any costs of legalization programs. In fact, the most generous reimbursement provision would have covered only a very limited number of governmental services. States and localities would still have borne the full responsibility for a vast range of general governmental services from police protection to transportation, to receation. Equally to the point, state and local governments have borne these and other costs for years as a direct result of the failure of the federal government to enforce its own immigration policies.

What the states seek is reimburseemnt for the additional costs which would result from legalization, particularly those costs that would result from federal decisions concerning eligibility for federal benefit programs. Illegal aliens are not now eligibile for such services and are discouraged from using what few services are available to them for fear of discovery and eventual deportation.

The states do not seek permanent protection from these additional costs. Instead, we ask for reimbursement during some transition period. Such an approach recognize that legalized aliens will become an increasingly productive component of our population and the fact that the longer term costs should be borne by both levels of governemnt.

The Governors also are concerned with the assertion that state and local costs of services to aliens can be, or are offset by the taxes which are paid by such aliens. Available data on this issue are even more sketchy than any relating to cost estimates themselves. However, the few studies that have been done should serve to dispel this growing myth.

Generally, the newly legalized aliens are expected to have income well below the average wage level in any given state. They are also apt to have larger size families and, as a result, make more intensive use of more expensive services, such as education, than the average non-alien family. The cost of services used, therefore, almost surely will exceed taxes paid. In California, the deficit has been estimated by the Urban Institute to be more than $2,000 per immigrant family per year. These deficits exist even when many aliens are barred from the use of services such as unemployment insurance and welfare assistance.

While we are fully prepared to work with the Congress to perfect our joint understanding of costs and revenues, it should be clear that legalization provides no sudden tax windfall to any level of government. So long as the vast majority of legalized aliens are employed in lower-wage jobs, as it does for all lower-income Americans, their consumption of services will well exceed their contribution to tax revenues.

The Governors are prepared to work with you once again to address the reimbursement issues. We recognize and appreciate the time and effort that you have devoted to these issues, and we believe progress is being made in understanding the nature and dimension of the problems. We believe that Congress must recognize and provide for the additional costs of legalization. This is particulary true during the early years of a transition process. The states are seeking neither a windfall nor a shift of legitimate state costs to the federal government. We are seeking only to avoid a further incursion on already hard pressed state and local resources.

The Governors appreciate the care which this committee has approached this complex issue. You have worked to address many of our concerns, and I hope that today I have been able to clarify the Governors' position on these issues we believe require further consideration by your Committee. I look forward to continuing to work with you and members of your Subcommittee in finding a workable solution to resolve our nation's immigration and refugee problems.

Senator SIMPSON. Thank you very much, Mr. Pingree.

Now Janice Peskin, please.

Ms. PESKIN. Thank you, Mr. Chairman.

I am pleased to appear before your subcommittee today to discuss the Congressional Budget Office's [CBO's] estimate of the legalization cost of S. 1200.

With your permission, I would like to summarize my testimony and submit it for the record along with the February 1985 study that discusses CBO's estimates more in detail.

Senator SIMPSON. Without objection, so ordered.

Ms. PESKIN. Thank you, Mr. Chairman. In my remarks today, I will first present the CBO estimates and then discuss their derivation briefly.

S. 1200 authorizes $600 million for each of 3 fiscal years for Federal grants to States to reimburse both their public assistance costs resulting from legalization and their costs for the imprisonment of all unlawful aliens. Under our estimates, authorization would begin in fiscal year 1989, the year we have estimated that the application process for legalization would end.

By our estimates, the authorization level of $600 million would be more than sufficient to cover estimated outlays of States and localities on imprisonment and public assistance in the 3 years from 1989 through 1991. We estimate outlays to cover imprisonment costs to be about $70 million a year, and we estimate Federal outlays for public assistance to be $65 million in 1989, $175 million in 1990, and $235 million in 1991. Thus, the grants to States would be about $305 million in 1991.

In the years other than 1989 through 1991, however, both before and after the authorization of the grants, States and localities would have to bear increased costs in their public assistance programs. These costs would be especially high in the 1992 through 1994 years when the aliens granted resident status would be precluded from receiving aid from Federal programs, such as food stamps and Medicaid that are based on financial need. For this 3-year period, we estimate these costs to States and localities to be about $225 million to $250 million a year.

Estimates of the costs associated with legalization are of necessity uncertain. Adequate data on the number and characteristics of unauthorized aliens potentially eligible for legalization simply do not exist. As a result, the CBO cost estimates depend crucially on estimation of two key factors:

One: The number of unauthorized aliens who would be granted resident status, and

Two: The benefits they would receive from Federal, State and local entitlement programs.

The number of unauthorized aliens assumed to be granted resident status in our estimates is 570,000. To reach this number, we first estimated that 5.6 million unauthorized aliens would be in the United States in 1986. This is the midpoint of the generally accepted range of 3 to 6 million in the United States in the late 1970's, increased by 150,000 a year beginning in 1980.

Second, based on Immigration and Naturalization Service studies, we estimated that 17 percent of the 5.6 million aliens would have entered the United States before 1980 and maintained continuous residence since then in the United States, making them eligible for legalization under S. 1200. With each year's delay in the passage of an immigration bill, fewer aliens would be eligible for legalization given a fixed cutoff date such as 1980, since some aliens would have returned to their native countries.

Finally, based on discussions with experts, we assumed that 60 percent of the eligible aliens would apply for and be granted resident status.

The second set of CBO assumptions dealt with the Government benefits the unauthorized aliens would receive after they were legalized. For these estimates, CBO made two important assumptions:

First, we assumed that the public charge test under current law would be effectively applied so that at the time the aliens requested alien status, they would presumably be working. They would then begin to receive program benefits slowly over time as their status changed; that is, as they became unemployed, disabled, or divorced, thereby allowing them to qualify for the various entitlement programs.

Second, we assumed that over time the aliens would receive entitlement programs at the same rate as the U.S. population, adjusted where relevant for age, sex, ethnic origin, or other differences. If 15 percent of U.S. families of Hispanic origin currently receive public assistance, then we assume by 1991 that 15 percent of legalized alien families of Hispanic origin would also receive public assistance. With these assumptions, we estimate that for 1991 just over 100,000 aliens or members of their families would receive State and local public assistance.

Estimated costs to States and localities from legalization are quite sensitive to the assumptions underlying the estimates, especially assumptions concerning the number of unauthorized aliens who would be granted resident status. If alternative assumptions were used, estimated costs to States and localities would rise or fall. Assuming, for example, that there were 6.5 million unauthorized aliens in the United States in 1986, if 25 percent had arrived before 1980, and if 75 percent of them applied for and were granted legalization, 1.2 million aliens would be legalized. Estimated costs to State and local governments in 1991 would be $575 million, almost double CBO's estimates and close to the $600 million authorization level.

On the other hand, if there were only 4.5 million unauthorized aliens, if 10 percent had arrived before 1980, and if 50 percent were granted legalization, only .2 million aliens would be legalized and costs would be about $165 million.

As these numbers indicate, the uncertainty about the number and characteristics of unauthorized aliens leads to a wide range of potential costs from the legalization provisions.

This concludes my statement, Mr. Chairman. I will be happy to answer any questions.

[Statement follows:]

PREPARED STATEMENT OF JANICE PESKIN

Mr. Chairman, I am pleased to appear before your Subcommittee today to discuss the Congressional Budget Office's (CBO's) estimates of the costs of legalizing unauthorized aliens under S. 1200, the Immigration Reform and Control Act of 1985. In my remarks today, I will first present these estimates and then discuss their derivation. In February 1985 we prepared a staff discussion paper that discusses the CBO estimates of legalization costs in more detail. With your permission, Mr. Chairman, I am submitting a copy of that paper for the record this morning.

LEGALIZATION PROVISIONS OF S. 1200

While considerable attention has focused on other parts of immigration legislation such as employer sanctions, this testimony deals strictly with the provisions that would legalize certain unauthorized aliens. For purposes of estimating costs to federal, state, and local governments from S. 1200, several legalization provisions are important.

- Unauthorized aliens who entered the United States before January 1, 1980, and who have resided here continuously since then would be eligible for legalization, as would certain Cuban and Haitian entrants.

- The legalization process would begin when a Legalization Commission, established under the bill, would find that the illegal entry of aliens into the United States, and their employment here, had been substantially controlled.

- The aliens granted resident status would be precluded from receiving federal benefits based on financial need for six years.

- Grants to states would be authorized to reimburse certain costs of state and local governments associated with legalization.

LEGALIZATION COSTS

S. 1200 authorizes $600 million for each of three fiscal years for federal grants to states to reimburse their public assistance costs resulting from legalization and their costs for the imprisonment of unlawful aliens. Authorization would begin in fiscal year 1989, the year we have estimated the application process for legalization would end. This estimate is based on an enactment date in late 1985, a two-year period before the Legalization Commission would report that the conditions for legalization had been met, and a one-year application period running from January 1988 to January 1989.

By our estimates, shown in Table 1, the authorization level of $600 million would be more than sufficient to cover estimated outlays of states and localities on imprisonment and public assistance in the three years 1989-1991. We estimate outlays to cover imprisonment costs to be about $70 million a year. Because states are currently meeting these costs out of their own budgets, these federal grants to states for imprisonment costs

TABLE 1. CBO ESTIMATES OF THE COSTS TO THE FEDERAL GOVERNMENT OF LEGALIZING UNAUTHORIZED ALIENS UNDER S. 1200 (By fiscal year, in millions of dollars)

	1986	1987	1988	1989	1990
Grants to States					
Authorization level	—	—	—	600	600
Estimated outlays for public assistance	—	—	—	65	175
Estimated outlays for imprisonment of aliens	—	—	—	70	70
Total estimated outlays	—	—	—	135	245
Other Estimated Federal Outlays a/	—	—	b/	25	65
Total Estimated Federal Outlays	—	—	b/	160	310

SOURCE: Congressional Budget Office.

NOTE: Revenues from the fees on applications for legalization are not included nor are costs to the Department of Justice for administering the application process.

a. Costs are for the Unemployment Compensation, Disability Insurance, and Medicare programs.

b. Less than $5 million. These are costs for aliens legalized in fiscal year 1988.

would save them money. We estimate federal outlays for public assistance to be $65 million in 1989, $175 million in 1990, and $235 million in 1991.

In years other than 1989-1991, however--both before and after authorization of the grants--states and localities would have to bear increased costs resulting from legalization in their public assistance programs. These costs would be especially high in 1992 through 1994--years when the aliens granted resident status would be precluded from receiving aid from federal programs that are based on financial need, such as Food Stamps and Medicaid. For this three-year period, we estimate these costs to states and localities would be $225 million to $250 million a year. Because of the uncertainty surrounding these estimates, I will later discuss their sensitivity to alternative assumptions.

In addition to the grants to states, there would be other federal costs in several entitlement programs for which the aliens might qualify after their legalization--for the Unemployment Compensation, Disability Insurance, and Medicare programs. These other federal costs would total an estimated $65 million in 1990. 1/ Therefore, we estimate the total federal costs of legalization would be $160 million in 1989 and $310 million in 1990, not including revenues or costs to the Department of Justice from the application process.

MAJOR ASSUMPTIONS

Estimates of the costs associated with legalization are of necessity uncertain. Adequate data on the number and characteristics of unauthorized aliens potentially eligible for legalization simply do not exist. As a result, the CBO cost estimates depend crucially upon estimation of two key factors:

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1. There is also a potential effect on federal revenues from the legalization of unauthorized aliens. However, CBO estimates this effect to be close to zero. The additional revenues collected are estimated to be approximately offset by increased refunds.

- The number of unauthorized aliens who would be granted resident status, and
- The benefits they would receive from federal, state, and local entitlement programs, such as Food Stamps or Unemployment Compensation.

The number of unauthorized aliens assumed to be granted resident status is 570,000. How we reached this assumption is shown in Table 2. First, we estimated that 5.6 million unauthorized aliens would be in the United States in 1986. To arrive at this figure, we started with the midpoint of the generally accepted range of 3 million to 6 million unauthorized aliens estimated to be in the United States in the late 1970s. We then increased this figure by 150,000 a year beginning in 1980 (4.5 million + 1.1 million = 5.6 million). This estimate is somewhat lower than the Administration's estimate of 6.5 million but probably above an estimate implied by a recent Census study that found only 2.0 million unauthorized aliens counted in the 1980 Census.

Second, based on Immigration and Naturalization Service studies, we estimated that 17 percent of the 5.6 million aliens would have entered the United States before 1980 and maintained continuous residence in the United States since then, making them eligible for legalization under S. 1200. Such a low percentage implies a quite high turnover in the unauthorized alien population, with many aliens leaving and many others entering the United States each year. This turnover means that with each year's delay in the passage of an immigration bill, fewer aliens would be eligible for legalization given a fixed cutoff date such as 1980, since some aliens would have returned to their native countries. It also means that later cutoff dates would make significantly larger numbers of aliens eligible for legalization. For example, a 1982 cutoff date would qualify 40 percent of unauthorized aliens.

Finally, based on discussions with experts, we assumed that 60 percent of the eligible aliens would apply for and be granted resident status. This is a higher percentage than occurred during the recent legalization of Cuban refugees.

TABLE 2. DERIVATION OF CBO'S ESTIMATE OF THE NUMBER OF UNAUTHORIZED ALIENS WHO WOULD BE GRANTED RESIDENT STATUS UNDER S. 1200

Number of Unauthorized Aliens in U.S. in 1986	5,600,000
(times)	
Percent of Aliens Who Came to U.S. Before January 1, 1980, and Would Thus Be Eligible for Legalization	.17
(times)	
Percent of Eligible Aliens Who Would Apply for Legalization and Be Accepted	.60
(equals)	
Number of Unauthorized Aliens Who Would Be Legalized	570,000

SOURCE: Congressional Budget Office.

To arrive at a cost estimate, the second set of CBO assumptions dealt with the government benefits the unauthorized aliens would receive after they were legalized. Because unauthorized aliens cannot now legally receive benefits from most entitlement programs, legalization would make them newly eligible for such programs, thus raising costs. While the bill would preclude their receiving benefits from federal programs based on financial need (Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, and Medicaid), they would be eligible for other federal programs such as Unemployment Compensation, as well as public assistance programs fully funded by states and localities.

To estimate the number of legalized aliens who would receive benefits under each program, CBO made two important assumptions. First, we assumed that the "public charge" test under current law would be effectively applied so that at the time the aliens requested resident status they would presumably be working. They would then begin to receive program benefits slowly over time as their status changed--that is, as they became unemployed, disabled, or divorced, thereby allowing them to qualify for the various entitlement programs. Second, we assumed that over time the aliens would receive entitlement programs at the same rate as the U.S. population, adjusted where relevant for age, sex, ethnic origin, or income differences. For example, if 15 percent of U.S. families of Hispanic origin currently receive public assistance, then we assumed that by 1991, 15 percent of the legalized alien families of Hispanic origin would also receive public assistance.

We used the same methodology to estimate public assistance costs to state and local governments, which would be covered by the authorized grants to states. Costs were included for people who would have qualified for the Aid to Families with Dependent Children and Supplemental Security Income programs--which the bill does not allow the legalized aliens to receive for six years--as well as for people who would qualify only for state and local assistance. By 1991, we estimate that just over 100,000 aliens or members of their families would receive state and local public assistance. Their benefit levels were based on average U.S. benefits in state and local General Assistance programs. These benefits in 1986 were estimated to be $1,670 a year for a single person for cash benefits and $600 to $2,000 a year per person for medical benefits depending on the person's family and health status.

SENSITIVITY OF THE ESTIMATES

Estimated costs to states and localities from legalization are quite sensitive to the assumptions underlying the estimates, especially assumptions concerning the number of unauthorized aliens who would be granted resident status. If alternative assumptions were used, estimated costs to states and localities would rise or fall. Assume, for example, that there were 6.5 million unauthorized aliens in the United States in 1986; if 25 percent had arrived before 1980, and if 75 percent of them applied for and were granted legalization, 1.2 million aliens would be legalized. Estimated costs to state and local governments in 1991 would be $575 million--almost double CBO's estimate and close to the $600 million authorization level. On the other hand, if there were only 4.5 million unauthorized aliens, if 10 percent had arrived before 1980, and if 50 percent were granted legalization, only 0.2 million aliens would be legalized. In this case, estimated costs would be $165 million in 1991. As these numbers indicate, the uncertainty about the number and characteristics of unauthorized aliens leads to a wide range of potential costs from the legalization provisions.

This concludes my statement, Mr. Chairman. I will be happy to respond to any questions you or other members of the Subcommittee may have.

Senator SIMPSON. Thank you very much.

Mr. Pingree, you state that the capped entitlement for legalization reimbursement might not be sufficient, and that CBO's estimates, by their own admission, are "uncertain."

However, CBO has stated here, even if the number of ultimately legalized aliens were twice what they estimate that the statutory cap would still not be exceeded.

In light of that, is not this statutory cap of $600 million per year, for 3 years, sufficient?

Mr. PINGREE. We feel that generally the estimates in this area are just so soft as to be unreliable, and although it might appear as if your cap is set at a level that would cover a large margin of error, again, based on our experience in Florida, and I will let other States speak for themselves, but I think Texas and California, too, that we have been burned before, and simply do not want to be burned again.

We in Florida still have unreimbursed costs of $150 million, and the Federal Government was not overly concerned about our carrying that burden.

Senator SIMPSON. Well, the Government was concerned from the point of putting up, lots of bucks in the House-Senate conference committee last year, but that was not sufficient. So instead of getting something, you got nothing. I do not understand how that works.

Mr. PINGREE. Well, again, if you base on experience the fact that—let us go back to the 1980 period. Congress provided 3 years of social services funding, which the administration at the end of 18 months said would be cut, even though we were fairly clear as to congressional intent, and we understood, when we conferred with both the House and the Senate, as to what that intent was, but that did not stop the executive branch from cutting off the dollars, and leaving it to the State and local governments.

We are simply not very confident without some real assurances, as to whether or not those funds would be there. I think there is room for discussion. I think there may be, and I, not having had the Federal experience, but only dealt with the legislative side, at the State level, we think perhaps there might be some language that could be added relative to your cap, that if the documentation from State and local governments that expenses and costs were to exceed the cap, that the Congress would consider supplemental appropriation, there may be some room for discussion. I do not think that we are trying to stop this legislation.

Senator SIMPSON. You express concern that the 3 years is not sufficient, and that the larger costs begin in the fourth year. However, in this bill, S. 1200, we provide for 3 years of reimbursement, in the second, third, and the fourth year after legalization has gone into effect, and it also allows the unused funds to be rolled into the following year.

Does that not significantly meet your concerns, or some of them?

Mr. PINGREE. That meets some of them, but still the costs in the fourth, fifth, and sixth years were fairly high, and we are saying, I think, that we ought—why be locked into 3? Why not look at the full period?

Senator SIMPSON. I must say that I have always felt that the costs for benefits made available to legalized aliens were in a sense a shared responsibility. Before you react to that, I mean shared between the State and local governments, which are collecting taxes from, and attributable to undocumented workers, and the Federal Government, which bears an awesome responsibility for failure to develop and enforce a rational immigration policy.

But the State and local governments do benefit in many ways from the undocumented workers, and they are presently receiving social benefits from those persons as well, that cannot be ignored. It cannot be said that it is a total Federal responsibility.

If that is the case, then I think all taxes collected from them at the State and local level, should be delivered over to the Federal Government, so we can do it that way. That is a twisted view, I know. But I just thought I would share it. [Laughter.]

I really feel strongly about that. It would indeed be a windfall. You say you do not want a windfall, and I understand that, and dealing with you, and knowing your fiscal prowess, and how you work, if there is a full Federal reimbursement, and that is what it is, then I believe there should be a delivery over to the Federal Government of the taxes collected at the local and State level, from these undocumented people.

Mr. PINGREE. If that could be truly determined, as to what that figure were, and if it is possible, that is one thing, but as I indicated in the testimony, the amount that is paid in is relatively insignificant, first and foremost.

Senator SIMPSON. We do not know that. Nobody knows.

Mr. PINGREE. Nobody knows anything much about that.

Senator SIMPSON. Would you agree it is something?

Mr. PINGREE. It is something. There are convicts sitting in prison that pay something, too. I do not understand why it is that somehow State and local governments are supposed to be responsible for people that the National Government, under the Constitution, is supposed to exclude from our shores.

Senator SIMPSON. That is true. That is a failure of the Federal Government, and therefore, the Federal Government should be coughing up a good deal of the money, but not every penny of it. Just as if to say nothing was collected in the State and local government from those people.

Mr. PINGREE. I can assure you they have not coughed up every penny in Florida, not even close.

Senator SIMPSON. I am trying to get a handle on what it would be, what are we talking about. I think the continual surprise to me was in the resistance, from the National Governors group, as we tried to get $4 billion for 3 years, and they said $4 billion for 4 years, and that is what we had.

The Administration had agreed to come up with four billion for four years, and the Governors Association group got together and said that is unacceptable, let us not accept the bill. That is a logic that is like Peter Pan flying through the window to me.

Mr. PINGREE. I think—and you were there, I was not a part of the conference—there were other factors in addition to this one that were at play, but the fact is we want to work this year to assist you in developing a bill that will pass. We are expressing our position, but we are also offering to try to work out some language, and to come up with a position that would be acceptable.

Senator SIMPSON. I look forward to working with you on that, as I have in the past. You are a thoughtful person, I have found in my travels, and these figures that are presented by Ms. Peskin I think are interesting.

In light of that, I ask, Ms. Peskin, you mentioned if the eligibility rate went up to 25 percent, and if the participation rate went up to 75 percent, than the costs of the bill would more than double, but that would still stay within the $600 million yearly cap.

Are you fairly confident that any error that might be in that estimation is unlikely to go above those higher figures?

Ms. PESKIN. Senator Simpson, I find it hard to be confident about anything having to do with the legalization costs. There is so much uncertainty associated with them. I think that, as we say in the testimony, using the high set of assumptions, which may be close to those that the administration uses in its estimates, we are up to $575 million, which is fairly close to the $600 million.

It is possible that the costs could go above $600 million, but based on our estimates, which we feel are midpoint estimates, it would be unlikely.

Senator SIMPSON. As you say, the bill's legalization reimbursement provivions err on the side of generosity, and it would seem that there is a significant cushion there, between estimated cost and the level of guaranteed reimbursement, as I see it, admitting the squishiness of how many are there.

You assume that 60 percent of the eligible population might actually come forward and request legalization. Yet, I think we know of no other Nation in the world that has witnessed such a high rate in a similar legalization effort, or program.

Is this again an estimate that, to be safe, errs on the side of generosity?

Ms. PESKIN. The estimate of a 60-percent application and acceptance rate for legalization could prove to be too high in light of the experience of other countries, where fewer have applied.

Senator SIMPSON. Then, of course, to add to the squishiness of it all, we take into account the possibility, in addition to the 17 percent we assume might qualify for legalization, there would also be some who would be found qualified based on their submission of fraudulent documents, perhaps an extraordinary array. That makes it more difficult to deal with, too, does it not?

Ms. PESKIN. Yes; it does.

Senator SIMPSON. Well, thank you very much. I appreciate your testimony. I look forward to working with you as we proceed with this issue revisited.

Thank you, David.

Thank you, Janice.

So the final panel then of the day, we have the Rev. Nicholas Dimarzio, executive director of the migration and refugee services of the U.S. Catholic Conference; Dale de Haan, director of the Immigration and Refugee Program of the Church World Service; Hyman Bookbinder—how are you, sir—Washington representative of the American Jewish Committee; and Althea Simmons, director of the Washington Bureau of the NAACP.

And, good morning to you.

I very much appreciate your being here, and knowing of your great and continual interest in immigration reform, and really your vast knowledge of it in the past, as you have watched this issue form in years past.

I do appreciate your views, and know that they will be thoughtful.

So with that, in the order of the agenda, I believe it would be appropriate for you, Reverend Dimarzio, to proceed with your comments, and thank you, sir.

STATEMENTS OF A PANEL CONSISTING OF REV. NICHOLAS DIMARZIO, EXECUTIVE DIRECTOR, MIGRATION AND REFUGEE SERVICES, U.S. CATHOLIC CONFERENCE; DALE S. de HAAN, DIRECTOR, IMMIGRATION AND REFUGEE PROGRAM, CHURCH WORLD SERVICE, NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA; HYMAN BOOKBINDER, WASHINGTON REPRESENTATIVE, AMERICAN JEWISH CONFERENCE; AND ALTHEA T. L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Reverend **DIMARZIO**. Thank you, Senator Simpson.

I present this testimony today in the name of Bishop Bevilacqua, who is unable to be here himself today. He is attending the semiannual meeting of the U.S. Catholic Conference.

I think it is important for us to describe the process through which this testimony has come to its complete form, a complete form which I will submit for the record. We have not merely restated old positions on former legislative proposals, but we have begun a comprehensive, consultative process to formulate renewed positions which reflect new realities and the present consensus of the Catholic Church in the United States.

First, we have held indepth consultations on the key elements of immigration reform with experts in these matters, both academic professionals and representatives of other interested organizations.

Next, consultations were held with church leaders in five strategic areas of high immigration throughout this country. And, lastly, just last week, the consensus positions were presented to the appropriate committees of the National Conference of Catholic Bishops. And so what we say here today does represent a consensus of most of the interested parties in the Catholic Church, who will also make their concerns known to their own legislators on the local levels.

The Catholic Church in the United States was founded as a church of immigrants, and we find ourselves becoming again a church of immigrants, due especially to the influx of many new Catholic peoples, especially the Hispanic migrant. Our pastoral and social services to these new immigrant peoples attest to our commitment and concern. Because in many ways the future of the Catholic Church in the United States is connected to our response to the question of real immigration reform, we are vitally interested and concerned that the proposed legislation will take the form of reform, and not merely control.

While immigration itself, both legal and undocumented, is perceived by many as a social problem, it has not been proven that the perceived immigration issues are really part of one social problem which can really be solved by just tightening control of immigration laws. The problem is much more complex than that.

The United States has a history that has proven the long-term economic and social benefits of migration. Even when, at a historical moment, immigration was perceived to be massive and intolerable, history has proven these times of reflection wrong.

Yet, we realize that any comprehensive immigration reform must have as key elements both the realistic regulation of migration and, as Bishop Bevilacqua stated in his 1982 testimony, "humanitarian relief to those already here, and who are enmeshed in current laws, which in so many instances are indeed responsible for the 'plight of the undocumented immigrants in this country'."

The bill presently before the subcommittee seems to be incomplete. It does not provide for adequate and sufficient relief for the undocumented people in our country. It no longer presents a balanced solution which would allow the church to tolerate the establishment of employer sanctions, albeit with strong controls against increased discrimination. I say tolerate, because the sanction solution is unsure. It is unproven, and even the present legislation admits that.

Our previous willingness to accept sanctions with a fair and concurrent legalization program cannot be repeated in the case of the present bill. The limited legalization program proposed depends on the verification, and I quote, "of the substantial elimination of employment of unauthorized aliens" by a legalization commission. There is no specification of a start date, which in fact may never be a reality. Our concrete suggestions on legalization, which include a registry update to at least 1976, are included in the detailed testimony which has been submitted.

Our position on the use of temporary workers is also highly complex and tightly reasoned and is included for the record, but it does suffice here to say the church's concern is for the basic human and workers 'rights which are so easily abused in temporary worker programs. This is our major concern.

The current proposals do not sufficiently address these issues. And if these basic concerns cannot be addressed by enforceable laws for the protection of these migrant workers, a temporary worker program according to the present N visa proposal, or the transitional program, are unacceptable to the U.S. Catholic Conference.

We have other specific reform concerns that are not addressed here, but are part of our complete testimony. The problem of migration is, indeed, a human problem. People are here in this country in an undocumented status, having no status in our society. That is a problem, not only for those people, but also for our society. This has been even well stated this morning.

But it suffices to say that the fear and the discrimination that many of these people live with is something that we do not want to tolerate, and we pledge our efforts to work along with the subcommittee and the Congress in seeking more true reform which address the issues of concern that we have.

Thank you.

[Statement follows:]

STATEMENT OF

MOST REVEREND ANTHONY J. BEVILACQUA

ROMAN CATHOLIC BISHOP OF PITTSBURGH

CHAIRMAN OF THE COMMITTEE ON MIGRATION AND TOURISM
NATIONAL CONFERENCE OF CATHOLIC BISHOPS

PRESENTED BY
REVEREND NICHOLAS DIMARZIO
EXECUTIVE DIRECTOR, MIGRATION AND REFUGEE SERVICES

ON BEHALF OF THE

UNITED STATES CATHOLIC CONFERENCE

IN RE: S. 1200

THE SENATE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

JUNE 18, 1985

Senator Simpson and Members of the Subcommittee:

I present this testimony in the name of Bishop Bevilacqua, and on behalf of the United States Catholic Conference. He is unable to present this testimony himself since he is attending the semiannual meeting of the National Conference of Catholic Bishops in Minnesota. Bishop Bevilacqua asks me to extend his appreciation for this opportunity to testify before this Subcommittee regarding the deep and continuing Conference concern for the efforts of Congress to grapple with true immigration reform.

It is important to describe the process by which the present testimony in its complete form, which is to be submitted for the record, was prepared. We have not merely restated old positions on former legislative proposals, but have begun, through a comprehensive consultative process, to formulate renewed positions which reflect new realities and the present consensus of the Catholic Church in the United States. First, in depth consultations on the key elements of immigration reform were held with experts on these matters, both academic professionals and representatives of other interested organizations. Next, consultations were held with church leaders in five strategic areas of high immigration throughout the country. Lastly, and just last week, the consensus positions were presented to the appropriate committees of the National Conference of Catholic Bishops. What we say represents the consensus of a substantial position of the interested parties in the Catholic Church: We will also make our concerns known to the local legislators whose constituencies were involved in the process.

The Catholic Church in the United States was founded as a church of immigrants and we find ourselves becoming again a church of immigrants due to the influx of many new Catholic peoples, especially the Hispanic migrant. Our pastoral and social services to these new immigrant peoples attest to our commitment and concern. Because in many ways the future of the Catholic Church in the United States is connected to our response to the question of real immigration reform, we are vitally interested and concerned that the proposed legislation will take the form of reform and not merely control.

While immigration itself, both legal and undocumented, is perceived by many as a social problem, in spite of many long hours of congressional debate on the issue, it has not been proven that the perceived immigration issues are really part of one social problem. United States history has proven the long term economic and social benefits which our nation has gained from even what was perceived at the historical moment as a massive and intolerable influx of immigrants.

As was stated by Father Theodore Hesburgh speaking for another organization before this Subcommittee on February 25, 1983, "We often lose sight of the fact that it is clearly in the interests of our Nation to accept a substantial number of permanent resident aliens". He went on to enumerate eight points which summarized the findings of the Select Commission. Each point indicated that immigrants are good for the country. Julian Simon, in a soon-to-be published book, The Economic Consequences of Immigration into the United States, has, as its main conclusion, that, contrary to popular belief, immigrants raise our standard of living, rather than lower it.

Yet, any comprehensive immigration reform must have as key elements both the realistic regulation of migration and, as Bishop Bevilacqua stated in his 1982 testimony, "humanitarian relief to those already here and who are enmeshed in current laws which in so many instances are indeed responsible for 'the plight of the undocumented immigrants in this country'".

True immigration reform must realistically address the desires of people to immigrate to this country. Family reunification has been the historical principle behind regular legal immigration to this land. This principle must be upheld and even strengthened.

The bill presently before this Subcommittee is incomplete. It does not provide adequate and sufficient relief for the undocumented worker in our country. It no longer presents a balanced solution which would allow the Church to tolerate the establishment of employer sanctions, with strong controls against increased discrimination and potential abuse of identification systems. I say tolerate because the sanctions solution is unsure, indeed as even admitted in the present legislation. Our previous willingness to accept sanctions, with a concurrent fair and generous legalization program, cannot be repeated in the case of the present bill. The limited legalization program proposed depends on verification of "the substantial elimination of employment of unauthorized aliens" by a Legalization Commission. There is no specification of a start date, which in fact may never be a reality. This is an unacceptable proposal. Our concrete suggestions on legalization, which include a registry update to 1976 are included in the detailed testimony to be submitted.

Our position on the use of temporary workers is complex and tightly reasoned and is also included in the complete text. It suffices to say here that the Church's concern is for the basic human and workers rights which are so easily abused in temporary workers programs. The current proposals do not sufficiently address these issues and if these basic concerns cannot be addressed by enforceable laws for the protection of these migrant workers, a temporary worker program according to the present N visa proposal or the transitional program (unless it means to bring a real end to the temporary worker program) could not be acceptable to the United States Catholic Conference.

We have other specific immigration reform concerns not addressed sufficiently or not mentioned at all in the present legislation. These include adjustment procedures for certain Cuban/Haitian nationals; special immigrant visa legislation for our contiguous neighbors, Canada and Mexico, so that family reunification may occur at a more reasonable pace; the long visa backlogs in many other countries; the plight of displaced persons from Central American now in the United States; the improvement of asylum procedures and the growing restrictions on the admittance of non-immigrant religious workers.

The process of striving for immigration reform must continue. Our detailed and well reasoned positions on these major matters — legalization, employer sanctions and temporary agricultural workers — follow.

LEGALIZATION

On October 3, 1979, Pope John Paul II, faced the statue of Liberty and praised America's historical symbols of freedom and ideals of liberty and respect for human dignity. At the same time, he appealed to all Americans

> ...to give a chance to all in need, to the poor and the powerless ... (and to break) the cycles of prejudices, ...despair...(and) underdevelopment....Freedom, justice will bring a new dawn of hope for the present generation as it has done before: for the homeless, for the unemployed, for the aging, for the sick and the handicapped, *for the migrants and the undocumented workers* (italics added), for all who hunger for human dignity in this land and to the world.

PREVIOUS USCC POSITION

The United States Catholic Conference (USCC) has long been on record in support of a generous legalization program. This stance rests on a number of both humanitarian and pragmatic principles and has been consistently reinforced by an in-depth appreciation of the structural weaknesses inherent in many of the proposals circulating in policy-making circles. USCC spokesmen have outlined the Conference position on legalization on numerous occasions. For instance, Bishop Bevilacqua, testifying on behalf of the Catholic Bishops in the 1982 joint hearings of the Senate Subcommittee on Immigration and Refugee Policy and the House Subcommittee on Immigration, Refugee and International Law, emphasized the Bishops' interests in a most generous legalization policy. Furthermore, he stated the strong opposition of the Catholic Church in creating a two-tier legalization system involving a temporary resident status for some aliens; and articulated the concern of the USCC that any ensuing legalization should remove discretion and provide clarity, rather than confusion, doubt, and fears — particularly with regard to determining the eligibility of applicants.

Subsequent USCC statements have reiterated these positions and have continued to urge Congress and the Administration to include a generous, single cut-off date for legalization for all undocumented aliens in the U.S. In addition, and as the legalization terms in the Immigration Reform and Control Act of the 98th Congress became more restrictive, the USCC took a more active role in strongly urging compassion and generosity, especially with regard to participation by the newly legalized immigrants in need-based federal assistance programs. Monsignor Hoye, the USCC General Secretary, restated repeatedly the opposition of the Conference to restricting access by those legalized to such programs as education, school breakfast and lunch programs, AFDC and other cash-assistance programs, as well as medicaid, preventive medicine, maternal and child health-care, and general child day-care programs. The Conference, then, has argued consistently in favor of both common sense and fairness with regard to legalization and has viewed federal assistance restrictions as inimical to promoting the general welfare and the best interests of the society. In view of this commitment of the Church to a generous legalization program, legalization has become the litmus test on whether any immigration legislation could be supported by the USCC.

The Conference shares the view of many that the existence of a large, undocumented population in the midst of a free and democratic society is intolerable both on human rights and justice grounds. From the various alternatives — including that of the status quo — only broad legalization appears to the Church to be realistic, effective, and humane. In this regard, the USCC agrees with the Select Commission on Immigration and Refugee Policy (SCIRP) which supported the concept of legalization on the basis of the following reasons:

- That since most undocumented aliens are hardworking and productive individuals who already pay taxes and contribute their labor to this country, they would be able to contribute more to the U.S. society once they came into the open.
- That legalized aliens would no longer be exploitable at the work place (because they would no longer be unwilling to avail themselves of the protection of the U.S. laws) and would no longer contribute to the depression of the U.S. labor standards and wages.
- That legalization should be an essential component of a total package of recommendations to stem the flow of undocumented migrants and will aid in the enforcement of U.S. immigration laws. It will enable INS to target its enforcement resources on new flows of undocumented aliens.
- Finally, and for the first time ever, the United States would have reliable information about the sources (specific towns, villages and provinces) of undocumented migration and the characteristics of undocumented aliens. This information would not only facilitate enforcement efforts to curtail future flows, but would also enable the United States to focus bilateral aid and investment programs in ways that might deter migration at its source.

LEGALIZATION: ADDRESSING ITS POTENTIALLY ADVERSE IMPACTS

Yet, while these principles are certainly valuable guides to policy, they are merely a beginning point for a compassionate and just social policy vis a vis undocumented aliens. Such a policy must also take into account the fact that the impacts of legalization will be unevenly distributed among different communities and classes and, ironically, that the costs of a humane policy are likely to be imposed on the most disadvantaged in our midst. Such a potentially cruel irony can be best abated by seeing legalization not merely as the expedient thing to do (in the face of an enforcement failure of monumental dimensions brought about by inconsistent policies and their arbitrary, if not discriminatory, implementation), but as a policy to be strengthened by the concomitant enactment of programs intended to help local communities and their citizens best absorb the impacts of legalization in a number of service delivery areas, and especially health and housing. In other words, since undocumented aliens may compete with and may displace indigenous labor in some localities, and since they also depress some wages and make direct and indirect demands on a number of public goods, services, and general infrastructure, a responsible national policy must protect its citizens and legal residents with such initiatives as special job-creation and retraining programs while also offering the possibilities for impact aid to local jurisdictions in recognition of the nation's failure to enforce immigration laws. Otherwise, the burden of legalization will fall unfairly and unevenly on those who directly have least to gain from such generosity.

LEGALIZATION: JUST AND FAIR PRINCIPLES

In other words, while fairness and equity must guide the legalization program, there must be recognition of the fact that the legislation must not force one to make choices among groups equally worthy of special consideration. Hence, the Church cannot legitimize legislation which gives the impression that the government's principal interest in legalization is an enforcement one — together with inadequately thought out or inconsistent policies and mixed implementation signals. Legalization is the only acceptable alternative that an open democratic society has to the Draconian measures and the enforcement nightmares attendant to a policy of mass round-ups and mass deportations. Once this is adequately understood as the founding motivation for legalization, it is easier to make the choices consonant with the other guiding principles of generous, open, democratic and prosperous societies. Those who have built equity and have made significant contributions to the economic well-being and the sociocultural richness of the country — as attested by steady jobs, obedience to the laws of the country and contribution to the community — should be legalized; so should those who are members of mixed legal/illegal households, for their exclusion would offer American citizen children only circumscribed socioeconomic opportunities because of the clandestine nature of their parents' status — thus creating a class of Americans who are second class citizens; in addition, any discussion on legalization must also include, in its foundation, the updating of the Registry to 1976. In the interest of equity to those seeking lawful entrance, there should be provision for the substantially accelerated admission of those who are already in the pipeline for admission but wait, trapped by the per country limitations. An accelerated admissions system can be developed where over the course of three to five years these backlogs can be substantially cleared.

At the same time, however, we must continue to bear in mind that a policy of legalization cannot be applied in a vacuum. It must be part and parcel of a set of initiatives which will not only address the problems of those already here but will also discourage future flows of undocumented migration to the U.S. To do so would require that a most generous cut-off date be offered so that the largest possible proportion of the undocumented become eligible; that grounds for exclusion from eligibility be specific and clearly stated so that they leave no room for administrative discretion; that a far-reaching public education campaign be an integral part of such a program; that a layer of voluntary agencies and community organizations provide initial screening of applicants so as to allay the fears of the undocumented community and remove the fear of apprehension and deportation that direct contact with the INS might entail; and that both interior and border enforcement efforts by the INS be redoubled.

THE ROLE OF THE CHURCH IN THE LEGALIZATION PROGRAM

Under these conditions, the USCC urges adoption of legalization provisions that would be simple, well-publicized and non-threatening, while also making it clear that the enforcement against those non-qualifying and/or future illegal entrants would be stringent and consistent. This program will have to address especially the perception of threat on the part of both undocumented aliens and those who represent and assist them. The reasons for this sensitivity involve the frequent deep distrust between the undocumented community and the INS which makes almost any involvement with that agency an adversarial one. As a result, extreme care must be taken to guarantee the protection of those who step forward to test their eligibility. The Church has a responsibility to safeguard and nourish, rather than erode, the special trust which its constituencies bestow on it in such matters as assistance in immigration matters. This could be done best through a no-fault screening system whereby applicants present the required documents to church agencies (and other trusted immigration counseling community organizations) for an advisory opinion on their eligibility. Only when eligibility is clearly established can clients be advised to go to the INS.

In addition, the Church must take a leadership role in urging compassion and generosity for those who might be found ineligible under the program. Those whose skills might be in short supply in the community, should be offered the opportunity of labor certification under a special program designed for this purpose. Furthermore, those who are to be repatriated should be given the opportunity to do so in a fair and orderly manner—which should include adequate time for the proper management of their affairs, disposition of their assets and recovery of any credits to which they might be entitled.

Finally, a formula should be developed to assist those found ineligible with their repatriation costs and waive obstacles to their future admissibility to the U. S.

ASSISTANCE ELIGIBILITY FOR THE NEWLY LEGALIZED

Another facet of the concept of legalization relates to the eligibility for need-based federal assistance programs for those who are judged eligible for temporary (and/or permanent) resident status within the legalization system. The current version of this immigration bill disqualifies newly legalized aliens from obtaining virtually any financial or medical assistance from any political jurisdiction in the U.S. if they ever hope to become lawful permanent residents. While these provisions may conform with the present political and economic climate, the USCC is convinced that they are not in the best interests of a just and prosperous society.

CURRENT USCC POSITION

The Church is interested in a constructive participation in the current debate on immigration reform. As a result, generous legalization must be seen in its relationship to the larger immigration picture. While it might offer temporary challenges to some groups and geographical regions, it also may change the entire discussion about a temporary agricultural worker program and might further help forge a consensus among government, business and citizens about the need for more stringent interior and border enforcement efforts in order to discourage new aliens from entering the U.S. in search of unauthorized work. The Church understands the necessity of some of these measures. Extreme care must be taken, however, to first enhance the ability of the INS to administer legalization effectively and fairly — and not just by hiring more personnel. A necessary statutory prerequisite to attaining this crucial goal of effective and fair administration of legalization provisions is language which avoids giving INS too much discretion in interpreting it and hence, in deciding whether to accept or deny an individual's petition for legalization. For example, particular attention must be paid to the definition of what constitutes a "public charge" and "continuous residence". With regard to the former, the USCC urges a statement of the sense of Congress that if a prospective applicant for legalization demonstrates that he/she is not receiving public assistance, even though one's income falls below the official poverty line, such applicant shall not be deemed a "public charge". With regard to "continuous residence", the USCC recommends that special allowances be made for undocumented workers from contiguous countries, especially Mexico, who as a matter of historical practice, recognizing the almost binational nature of some of the U.S. Southwest, might not meet the more stringent requirements which would present few problems to undocumented aliens from other more distant countries of the world in other parts of the United States.

During the past few years legalization has proven an extremely controversial issue and has given, and will continue to give, rise to incendiary rhetoric particularly by its opponents. In this key matter of what the former Executive Director of SCIRP, Lawrence Fuchs, calls the "question of membership", some, perhaps a majority, of the population may feel that by granting what amounts to blanket massive citizenship, the U.S. might "cheapen" that commodity and reward those who evaded the law. At the same time, opponents might argue that legalization might prove a "magnet" and might "encourage" others to come in on the expectation of another "amnesty" in the future. Others yet, exposing the "dark-side" of this debate, may speak of the implications of this massive regularization for the future ethnic, and racial, make-up of the U.S. and the implications of such changes for both foreign and domestic policies in the twenty-first century and beyond. In this increasingly ungenerous climate the USCC wishes to stand up and condemn such statements and urges a partnership among public and private agencies in a public education campaign about the contribution of immigrants to the social and economic life of this nation.

Rhetoric aside, however, the challenge ahead appears clear. The "triggering" mechanism offered in current legislative proposals would create an unwelcome feeling of equivocation and uncertainty around the country — particularly since no substantially valid methodology exists which can assess whether sanctions are "largely" effective. In addition, and in view of the "catch-22" effect of this proposal discussed elsewhere, the concept contravenes the consensus reached by SCIRP — of which Mr. Simpson was an active member — in favor of triggering legalization after sanctions are in place, not after they have been judged to be effective. In other words, the Church must insist on a legalization program which is generous and clear in its deadlines for filing and requirements for qualification; removes opportunities for administrative arbitrariness in matters of exclusion; includes an extensive outreach program; offers the opportunity for participation in planning and screening by associations representing ethnic communities and other responsible community and denominational social agencies; eliminates the risk for those who might not be able to prove eligibility; allows adequate appellate recourse for those disqualified by the INS; and offers the newly legalized the same protections and benefits available to all resident aliens.

EMPLOYER SANCTIONS

PREVIOUS USCC POSITION

The United States Catholic Conference (USCC) has been fundamentally opposed to employer sanctions. In 1976, Archbishop Sanchez of Santa Fe, testifying on behalf of the Catholic Bishops before the Senate Judiciary Immigration Sub-Committee, anchored the opposition of the Catholic Church to employer sanctions on civil rights grounds. Since then, spokesmen for the USCC have consistently refined and reiterated this opposition.

Yet, this opposition has not been unconditional. Beginning with Bishop Kelly, the Conference's former General Secretary, there has been an increasing recognition of the need for a constructive stance on employer sanctions. The Conference has continued to be extremely concerned about the potential which sanctions have for increased discrimination against minorities but has indicated that it might be willing to accept sanctions under certain circumstances: if they are an integral part of a generous legalization program; if they are accompanied by a secure and uniform national employment identification system required of all job applicants; if they are accompanied by stringent anti-discrimination legislation (viz. both the Frank Amendment to last year's HR 1510 which would prohibit discrimination based on alienage and the monitoring of discrimination by the Civil Rights and the Equal Employment Opportunity Commission); and if they exempt from the legislation those employing less than four persons so as to protect from the intricacies of the law small-scale operations and those who do only casual hiring. In essence, then, the USCC has shared many of the concerns expressed by Hispanic and other ethnic groups on sanctions and has emphasized the need for strong and effective anti-discrimination measures to protect this nation's minorities.

ARE SANCTIONS NECESSARY? ARE THEY LIKELY TO BE EFFECTIVE?

In view of this position, it is necessary first to consider two questions at some length. First, are sanctions necessary and second, how does one prevent, rather than merely palliate, their adverse impact on minorities. The answer to the first question might at first appear unequivocal, but it is not. While sanctions are a drastic economic model of intervention, it is offered as a means of redressing what may be equally a social and political problem — rather than an exclusively economic one. Furthermore, there is considerable uncertainty as to whether sanctions can indeed accomplish the stated goal of substantially preventing the unauthorized employment of undocumented aliens. In view of current proposals according to which the triggering of legalization would hinge on the effectiveness of sanctions, one must be extremely skeptical of the ability of the system to certify that sanctions have indeed been successful. The USCC recognizes that, since the primary attraction of the U.S. to undocumented immigrants is employment, attacking the availability of such jobs remains of paramount significance in controlling undocumented immigration. Yet, sanctions are not the only answer. Another alternative, often championed by Senator Kennedy and given serious consideration by the Select Commission on Immigration and Refugee Policy, would focus on the aggressive enforcement of labor, social security, and civil rights laws. Although that avenue might conceivably reduce the pattern of exploitation frequently associated with the employment of undocumented workers, it might not alter substantially the size and flow of undocumented migration.

The USCC believes that the two alternatives might be neither necessarily incompatible, nor mutually exclusive. In fact, each is likely to have an impact on different stages in the employment process and, together, they might offer high protection for all workers from unscrupulous employers.

THE QUESTION OF DISCRIMINATION

The second question goes beyond cushioning minorities from the potentially adverse impact of employer sanctions. Such adversity is increasingly imposed on ethnic minorities either as a matter of prejudice or as the result of overanxious employers who, in their desire to be law-abiding citizens and avoid production interruptions caused by INS raids, already enforce a "safe" system of avoiding the hiring of, or even firing, employees whom they judge (by appearance and accent) to be "risks". In view of such alarming trends, and the increasing potential for abuses inherent in such recent INS initiatives as "Operation Jobs" and "Operation Cooperation", the USCC recognizes that a system which would allow employers to routinely comply with the law with minimum effort and paper work, and no opportunities for discretion, might be an improvement over the status quo. While the technology for such a system is available, however, one must give extremely serious thought to the possibility that the existence of such a personal data-base may prove irresistible to a government during a time where there might be a perception of a "national threat". Similarly, the employment identification system, even if voluntary in nature (as some current proposals would make it), cannot be guaranteed not to become a de facto national identification system. In view of these concerns, one must weight the benefits of a tamperproof employment card — which would come closest to removing discretion, and hence, discrimination, from the employment place — against less secure systems which will allow room for continuing discrimination and will fuel the thriving business in counterfeit documents. In other words, an argument in favor of the principle of sanctioning employers for hiring undocumented aliens must recognize that either now, or at a time when the nation might become more serious about enforcing such legislation, we will likely see an irresistible need for a system whereby accountability can be clearly assessed, i.e. a tamperproof employment identification system.

CONSIDERATIONS

The challenge the society faces is how to remain sensitive to questions of how best to balance the legitimate concerns of minorities, who fear increased discrimination, and of the employers, who neither want to be placed in the position of becoming enforcers of the nation's laws nor be burdened with additional regulations and paper work requirements, against the interests of the society at large. At a minimum, the Church would welcome the development of fair interim measures in this area, during which time an evaluation of the advisability and character of a more permanent system can take place.

In other words, essential components of the question of sanctions must also address a number of other not easily resolvable analytical, legislative and enforcement problems. For instance, how does one respond to the legitimate apprehensions of those groups in our society who are genuinely concerned about expanding the role of government even further? Furthermore, while one might argue that adequate safeguards are either in place and/or can be quickly developed which will prevent the employment identification system from becoming a de facto national identification one, or perhaps, that credit institutions already constitute a much larger intrusion into our privacy, the fact remains that those fears of civil libertarians which have merit must be addressed.

There has been considerable concern voiced of late about discrimination based on "alienage". While a number of analysts would look to Title VII of the 1964 Civil Rights Act for protection, civil liberties groups argue that neither the language nor the enforcement of the act are deemed to be adequate to safeguard one against employer discrimination. The Church concurs with these analyses.

Yet, while there are very few absolute guarantees that sanctions will not lead to some discrimination or that an employment verification system might not be used by a corrupt government to violate the rights of individuals, a debate on limiting access to this information (perhaps by a constitutional amendment, as originally suggested by the Select Commission on Immigration and Refugee Policy) and enhancing anti-discrimination legislation in general might enable the Church to reconsider its opposition to sanctions.

CURRENT USCC POSITION

To reiterate, the USCC understands that sanctions must be balanced against two other, equally, if not more, valid concerns: the perception that illegal immigration has many real deleterious effects on the society at large and the concern that any measures contemplated must neither impose an unacceptable burden on the employers (such as a loose and confusing or an overly complex identification system would) nor offer the potential for violating the civil and labor market rights of minorities. In addition one must also consider the relationship of sanctions to the overall question of immigration reform. If indeed sanctions become a precondition for a fair and generous legalization program, USCC will consider supporting them as part of a larger package but only within the parameters already discussed, that is a clear anti-discrimination mechanism and safe guards against the misuse of new identification systems.

Unless these conditions are satisfied, the Church must oppose sanctions because we are convinced that enforcement will, by definition, fall disproportionately on employers employing Hispanics and on all employers in areas of high Hispanic concentrations. Hence, since the enforcement price, and the discrimination potential, will be borne so unevenly — and it has become increasingly obvious to the USCC that the immigration issue, and the reactions to each component of the various legislative proposals, vary substantially in different parts of the country — any ensuing legislation must offer extraordinary guarantees to allay the legitimate concerns of these groups. Finally, the Church must take strong exception to the pernicious "catch-22" effect in the proposed legislation which will certainly fuel further the fires of controversy and contentiousness on this issue: if the legalization trigger can only be activated by "evidence" of effective operation of the sanctions' system, many previously and otherwise eligible-for-legalization aliens would lose their jobs and run afoul of the "public-charge" provisions of that legislation. The vicious circle will again be in operation and the entire concept of legalization will have lost much of its meaning and appeal. As a result, accepting sanctions as the price for a future "generous" amnesty may prove irresponsible.

In view of the complexity of this issue, the Church urges the forming of a partnership among such key societal actors as government, employer and employee groups, and legitimate institutional interests in an attempt to develop fair policies in this regard.

TEMPORARY AGRICULTURAL WORKER PROGRAMS

In his Encyclical on Human Work (Laborem Exercens), Pope John Paul II discusses agricultural work:

> ...But even in the economically developed countries, where scientific research, technological achievements and state policy have brought agriculture to a very advanced level, the right to work can be infringed when the farm workers are denied the possibility of sharing in decisions concerning their services, or when they are denied the right to free association with a view to their just advancement socially, culturally and economically.
>
> In many situations radical and urgent changes are therefore needed in order to restore to agriculture — and to rural people — their just value as the basis for a healthy economy, within the social community's development as a whole. Thus it is necessary to proclaim and promote the dignity of work, of all work but especially of agricultural work, in which man so eloquently "subdues" the earth he has received as a gift from God and affirms his "dominion" in the visible world.

Previous USCC Position

The United States Catholic Conference (USCC) has long been on record in opposition to large-scale temporary agricultural worker programs. This stance has rested on a number of principles and has been consistently reinforced by an in-depth appreciation of the structural shortcomings and inadequacies of previous programs and policies on this matter. In 1976, Archbishop Sanchez of Santa Fe, testifying on behalf of the Catholic Bishops before the Immigration Sub-Committee of the Senate Judiciary Committee, stated the opposition of the Catholic Church to such temporary agricultural worker programs on the grounds that most previous legislation in this regard had failed to come to grips effectively and satisfactorily with the mechanism for giving preference to local workers (especially with regard to how much of an effort an employer should be required to make to recruit domestic workers), and the question of the adverse effect of past programs on labor standards and wages for domestic farm workers.

Since then, spokesmen for the USCC have consistently reiterated these concerns. In fact, the Conference, in extensive testimony by Monsignor George Higgins before the Sub-Committee on Labor Standards of the House Committee on Education and Labor on May 3, 1984, both restated and expanded on its previous position by relying on the extensive familiarity of Msgr. Higgins with the bracero program due to his service on the Mitchell Commission which evaluated the program in the late 1950's. Msgr. Higgins testified that in addition to affecting adversely the wages and working conditions of domestic workers, the bracero program actually restricted employment opportunities for domestic farm workers, severely impeded opportunities for unionization, failed to offer statutory provisions mandating adequate housing and sanitary facilities, and as a result, led to the exploitation of foreign workers. Because it believes that the mass importation of temporary agricultural workers carries within it many "inherent evils," the Church has opposed such programs both on human rights and justice grounds — as well as on the grounds of its "disastrous effect" on the U.S. labor force.

Temporary Agricultural Worker Programs

Temporary agricultural worker programs allow the organized entry of foreign workers as a response to what is considered to be a need for a temporary adjustment to a labor market anomaly. Entry usually entails severely curtailed social and limited labor market rights for participating workers. The duration of stay is always presumed to be finite and compliance with the terms of the agreement both by employers and workers is presumed to be enforced through a network of legal arrangements which allow U.S. officials considerable discretion in such matters as determining labor needs and verifying whether employers have made a concerted "good faith" effort to recruit domestic workers, whether this effort has indeed been unsuccessful, and whether the levels of the labor support sought do not exceed the actual need and, as a result, will not have adverse wider social and economic impacts.

a. Pro-temporary Agricultural Worker Arguments

U.S. proponents of temporary agricultural worker programs often speak of the "special circumstances" where the domestic agricultural labor market is unable to provide enough seasonal workers to sustain production in many areas of labor-intensive agriculture, especially fruits, vegetables and nurseries. These interests further deny that the border can be effectively controlled, suggest that a temporary agricultural worker program can be an effective response to that sector's present dependence on illegal labor, and argue that legal temporary agricultural workers allow for the "management" of both alien workers and employers by preventing exploitation and minimizing adverse impacts on U.S. workers while also maintaining respect for the law. Furthermore, they point out that a temporary agricultural worker program has pronounced benefits for the U.S. economy by keeping food production costs stable, ensuring the continuing viability of the family farm, and, in many instances, promoting the socioeconomic advancement of domestic agricultural workers.

In addition, since temporary agricultural workers are presumed to respond to a genuine labor shortage, they are truly noncompeting workers, i.e., they do not displace domestic workers, and because of their demographic composition and lack of access to social programs, temporary agricultural workers are seen as making few demands on the host country's social infrastructure.

Finally, proponents also use a number of foreign policy arguments to buttress their position further.

b. Anti-Temporary Worker Arguments

The USCC, along with those opposed to temporary agricultural worker programs, endorses arguments which stress longer-term socioeconomic questions while decrying short-term economic expedience. Such programs are no "quick-fix" for either illegal immigration, domestic "labor shortages", or our poor neighbors. Temporary agricultural worker programs provide short-run economic benefits to a few employers and individuals at the expense of more widespread and longer-term socioeconomic costs.

There are at least five basic problems with large-scale foreign temporary agricultural worker programs:

(1) the concept of admitting foreign workers with restricted rights to do permanent, if at times seasonal, work;

(2) the concentration of any negative labor market impacts on already disadvantaged domestic agricultural worker groups;

(3) the proliferation and perpetuation of the myth of "jobs Americans won't take";

(4) the conceptual concerns butressed by impressive evidence which seems to show that many temporary "guests" wind-up as permanent residents, both legal and illegal; and

(5) the established findings that exporting workers is as likely to impede, as to accelerate, job-creating economic development in emigration countries.

The USCC believes that one of the strongest arguments against large-scale temporary agricultural worker programs, however, is that of equity. Temporary agricultural workers are perfect examples of socioeconomic marginality, a condition constantly reinforced by such factors as "special" (i.e. inferior) legal status and lack of relevant labor market and linguistic skills, and of a de facto twin political disenfranchisement — at home and abroad. The U.S. traditionally has not separated the right to work from the right to permanent residence and eventual citizenship — a separation inherent in any temporary agricultural worker program. Hence, the concept itself is ipso facto incompatible with the fundamental tenets of our democratic system.

CONSIDERATIONS

Even when the program might be well conceived and effectively administered, the inherent negative impacts of temporary agricultural workers fall most heavily on domestic workers with similar labor market characteristics. Hence, an influx of foreign workers would be likely to depress wages and displace domestic workers. Labor market competition between foreign workers and natives does not have to be direct, as when a native and an alien compete for one job which goes to the alien. More often, the competition is indirect, as when aliens willingly accept the wages and conditions offered by employers whereas domestic workers, with their higher expectations, do not or believe they cannot accept. In one sense, any such native unemployment is "voluntary", but it should be evident that the availability of foreign workers has altered the rules-of-the-game.

The availability of foreign agricultural workers leaves the current job structure more or less intact, since a ready labor supply provides few incentives to upgrade or restructure jobs. To regularly provide temporary agricultural workers widens the gap between bottom and mid-level jobs by subsidizing some employers at the expense of actual and potential domestic worker competitors. Instituting programs which import unskilled foreign agricultural workers to meet "labor shortages" implicitly assumes that the receiving government, as a matter of choice, does not want to close the gap between bottom and middle-level jobs - - perhaps from fear that rigid wage hierarchies will exert upward pressure on the entire wage structure. Indeed, the availability of foreign agricultural workers may increase the number of low-level jobs, as some domestic workers may shun "foreign worker jobs" and employers are "forced" to rely on imported labor.

Instead of simply controlling wage increases and spurring new, productivity-enhancing investments, the availability of additional labor can make labor "too cheap". In other words, additional labor represents a double-edged sword. It can keep wages reasonable, increase profits, and spur investment; or it can depress wages and encourage firms to substitute cheap labor for expensive capital, thus retarding investment and causing labor productivity to stagnate.

A temporary agricultural worker program can also lead to economic distortions because not all employers will use foreign workers. Foreign migrant workers entail presumably low production costs due to their depressing effect on wages. Hence, foreign labor can be viewed as government intervention to provide a wage subsidy. Employers arguing that they will "go out of business" without foreign workers are really saying that consumers will not purchase their goods and services unless production is subsidized. Foreign labor willing to work at low wages is a labor subsidy, just as a low-interest loan is a capital subsidy.

Finally, besides raising serious socioeconomic and labor market questions, temporary agricultural worker programs disrupt family life by separating the main wage earner from his/her family and can be administrative nightmares. Controversies surrounding the Bracero and the H-2 programs of the past show how hard it is to operate a program supplying temporary workers for agricultural jobs.

To reiterate, the case for temporary agricultural workers rests on law enforcement and economic and, to a lesser extent, foreign policy grounds. In objective economic terms, most individual alien workers and their U.S. employers benefit from legal entry. Furthermore, the consumer of products produced with foreign labor benefits from the "hidden subsidy" which such labor provides. What is less clear, is whether the U.S. and the sending society as a whole benefit from the labor exchange.

LABOR INTENSIVE AGRICULTURE

The food system (which includes farm inputs, farm produce, and product processing and distribution) is this nation's largest industry. Yet, farmers and farm workers comprise only about 3 percent of the total work force. The overwhelming proportion of farm acreage, and the producers of over 80 percent of agricultural products, are capital-intensive operations requiring little seasonal labor assistance. The situation is different, however, for the few states which produce the bulk of what is only a small proportion of the nation's total agricultural output: labor-intensive fruits, vegetables, and nursery products. It is estimated that between 70 and 95 percent of all workers in many California specialty crop farms are hired workers and of them large, but varying, proportions are undocumented workers.

While the degree of dependence on foreign workers, wages, working conditions, and worker characteristics vary by size of farm, commodity, and area — the entire specialized agricultural industry professes an unabating need for supplies of labor which legal farm workers are presumed to be unable to provide. While most such producers use undocumented Mexican workers as both supplementary and primary labor, the sugar cane industry in Florida and a number of fruit industries throughout the Northeast, utilize temporary agricultural workers from several Caribbean nations.

THE PRESENT TEMPORARY AGRICULTURAL WORKER SYSTEM

The present system has evolved into a highly structured operation. It has recently found an expanding constituency among growers who are increasingly willing to enter into this labor arrangement as the price for accepting employer sanctions. Their assent to sanctions, and participation in such a temporary agricultural worker program, however, is conditioned on changing the program to facilitate its expansion while diluting many of its provisions which are seen as too cumbersome and/or requiring substantial capital investments. Among the latter is the requirement that employers provide housing for the temporary agricultural workers. Among the former, seen as too restrictive, are a host of strict requirements designed to give preference to domestic workers; prevent the temporary agricultural workers from having adverse effects on the indigenous agricultural labor market in matters of wages and working conditions; guarantee that the foreign workers not be used to settle labor disputes unfairly; impose stringent time requirements to ensure that a good-faith search to obtain, and an effort to retain, indigenous workers has been made; assign liabilities for misadministration of the program; and restrict the length of visa periods for workers and their ability to search for additional employment after the expiration of their original contract. The Church is adamant in its opposition to all attempts to weaken these protections currently provided for the domestic agricultural labor force.

While many observers recognize that the temporary agricultural worker system, as it is currently functioning, is at times awkward and time-consuming, its intent is well-placed: to give true preference to indigenous workers and encourage reform and planning in agricultural practices. The previous disinterest of growers in the program (in recent years only an average of 15,000 H-2 agricultural workers were admitted each year), attests to its unpopularity when compared to the ease of, and few costs associated with, obtaining undocumented agricultural workers. The growers' recent interest in the program is an attempt to be "reasonable" in the face of immigration reform legislation which seems committed to the concept of sanctioning employers for employing undocumented workers.

CURRENT USCC POSITION

Temporary Agricultural Worker Reforms

While the Church recognizes that growers have a legitimate concern about having access to adequate seasonal labor — not all of which may be able to be met at each instance without immediate and radical alterations in the farm labor recruitment system, wage structure, and conditions of work — it insists in making more stringent, rather than diluting, the tests for establishing a case-by-case need for a supplementary farm work force. The intent would be to offer growers a real incentive for preferring indigenous workers by removing many of the incentives currently built into the temporary agricultural worker program and carefully evaluating current proposals with an eye toward supporting and augmenting those which are intended to address genuinely extraordinary situations, simplify the recruitment and placement process for such situations and further protect all agricultural workers — regardless of nationality and legal status. At the same time the Church opposes all proposals which are or could become pretexts for diluting the safeguards of the system with regard to protecting migrant agricultural workers, and which continue to provide incentives to agricultural employers to prefer foreign workers to indigenous ones and thus continue that sector's dependence on such labor.

The Church feels that there is little in the way in which the present temporary agricultural worker program is administered that allows either for a full test of the domestic labor market or promotes the hiring and retention of indigenous workers. In fact, the "adverse effect wage rate" is usually set in such a manner which in effect makes foreign workers, rather than indigenous workers, highly attractive to many growers. When considering that employing foreign workers offers no incentives to improve working conditions, invest in labor-saving machinery, train indigenous workers, deal with the competitive forces which operate in every other labor market, reform the extremely one-sided power relationships which place the employer in absolute control of all labor-relations matters — from recruitment to dismissal — and, in addition, excuses the employer from making FICA payments or offering even a modified health and social insurance-benefit package, one realizes the nature and depth of the grower dependence on temporary agricultural workers and the extraordinary incentive to remain dependent. Removing all of these incentives is a necessary first step in making the Church seriously consider a modest, controlled, and case-by-case, expansion of the current system.

A final consideration with regard to the temporary agricultural worker program is for the Church to take the initiative in promoting the concept of offering to such workers, under the reformed system just outlined, an opportunity to build credits — both toward becoming eligible for some benefits such as limited unemployment insurance and pension rights and toward an adjustment-of-status to legal residence after a definite period of uninterrupted (i.e. annually, rather than in terms of consecutive months) temporary agricultural employment in the U.S. For instance, a variant of the Swiss model may be employed here which awards limited residence rights to seasonal workers who work in Switzerland for at least 32 months in four consecutive years.

A "Truly Transitional" Temporary Agricultural Worker Program

The current proposals provide, in addition to a new temporary agricultural worker program, a three-year transitional temporary agricultural worker program. While envisioned as a transition from the use in the Western United States of undocumented workers to the use of new temporary agricultural workers, the Church proposes the reform of the entire migrant agricultural worker system and the improvement of the lot of this nation's migrant workers. In this context, the Church recognizes as legitimate the need for a "truly transitional" temporary worker program, geared explicitly toward weaning agriculture from its dependence on all foreign labor, rather than substitute dependence on a new temporary agricultural worker program as current proposals would do. While this may require a longer transition period than the three years now discussed, and an exemption from the sanctions provisions of the pending legislation for the duration of this transition, its goals would certainly justify some additional forbearance and consideration.

CONCLUSION

In the present political rhetoric of less government, persistent emphasis on the magic of the market place, and repeated references to the need to subordinate special interests to the common interest, administration support for the establishment of a new temporary agricultural worker program either in a form as now administered or in an expanded version would be inconsistent with stated current policies. Such systems would encourage further government intervention, represent a substantial subsidy to a specific subsector, prevent that subsector from making the necessary adjustments to remain competitive, prevent the Administration from fully pursuing foreign policy goals like those offered in the Caribbean Basin Initiative, and weaken the national resolve for increased equity and labor market reforms.

In Laborem Exercens, Pope John Paul II takes basic justice for the agricultural worker - - foreign or domestic - - as his point of departure in outlining the concern of the Church for the agricultural worker. The policies which best reflect his concerns must prevent exploitation, offer full legal protection and extend basic social services to the migrant and his family, allow migrants to participate in the making of decisions about themselves as workers, and guarantee to the migrant workers the right to free association - - including opportunities for their just social, economic and cultural advancement.

That these concerns guide the Conference in its consideration of temporary agricultural worker programs is self-evident. Hence, a policy on a limited temporary worker program acceptable to the USCC must meet the following litmus tests: Do such programs safeguard the full social and economic rights of domestic workers? Do they protect the foreign agricultural workers against exploitation? Do they meet the just and legitimate needs of the growers? Do they serve the legitimate interests of the society at large? Finally, do they advance proposals which promote an environment of peace and complementarity, rather than competition and polarization, between domestic and foreign temporary agricultural workers and between the legitimate institutions which represent each group's interests? In other words, the aim of the Church in this regard is to help develop and pursue policies which address the frequently contradictory aims and adversary relationships among key interests in this matter of agricultural migrant workers and thus try to strike a national partnership intended to wean agricultural employers from their dependence on foreign labor. Nothing less than justice, social and economic peace in the agricultural sector, and the conscience of the entire nation, may be at stake.

Senator SIMPSON. Thank you very much. We appreciate that.

Dale de Haan, nice to see you, sir.

Mr. DE HAAN. Thank you, Mr. Chairman, members of the committee.

It is a pleasure to appear before you today to relay to you our comments on S. 1200, on behalf of the National Council of Churches.

I just wanted to say with me here today is someone you know, Mr. Chairman, Michael Myers, who is our Washington representative here.

Senator SIMPSON. Welcome.

Mr. DE HAAN. Mr. Chairman, we are hopeful this will finally be the year for immigration reform. We intend to work very hard with you to try to complete the job of reforming our immigration laws and policies, to bring them more in tune with the needs and the demands of the immigration field today.

While we do have some significant differences with S. 1200 as it is currently written, we do believe it does a commendable job of appropriately defining the agenda for the current debate.

We agree with you that a more narrowly focused vehicle is needed to avoid some of the snags of the past omnibus bills, and I want to reiterate that, because I think it is a terribly important point of departure in this discussion.

The churches, Mr. Chairman, are very much concerned about the state of our immigration affairs. I have traveled the length and breadth of this country over the past several months, in all sections of the country, and without fail, every area of this country, in one degree or another, talks about the question of undocumented aliens, and the reform of our immigration laws.

And while much is said about the role of undocumenteds in the marketplace, and in the work place, our primary contact with this community is in the church place. Thus, our policy interests cannot help us reflect this personal face-to-face experiences, and these hopefully are seen in our written statement. I would ask that our written statement be incorporated in the record, so that I may summarize here just a couple of points.

Senator SIMPSON. Without objection, so ordered.

Mr. DE HAAN. Our strongest comments, Mr. Chairman, come with making the legalization program contingent upon the finding of the Legalization Commission. I have some personal questions about the validity of a Commission, and while we trust that the members of this Commission would be legalization supporters, we believe that its task would be impossible to perform. The commission is required to compare the future with the present, and to note substantial improvement in the effectiveness of enforcement.

The problem with that proposition is that we really do not know what the present really is. Yesterday's panel of experts confirmed this point, and we share their view. The task of the Commission is a bit like asking the scorekeeper who won the game when he missed the first half.

We propose as an alternative that the legalization simply be delayed until a date to be specified in the legislation itself, and if I recall correctly, I think there was a 6-month delay in the conference bill of last year.

We do believe, however, that the implementation of legalization, and the implementation of sanctions should be done contemporaneously. For reasons outlined in our statement, we believe such an approach is not only preferable, but also more consistent with the recommendations of the Select Commission, which we quote and cite in our testimony.

This would allow us the time that we all need to get organized for the program, to stagger the implementation of the many new responsibilities the reform will place on the Immigration and Naturalization Service, and to do desperately needed educational work on the merits of the program, and more.

We would also urge, Mr. Chairman—I want to underscore this point—that additional attention be paid the equities of those undocumented aliens, who may have been resident in the United States after January 1, 1980, or any date which is finally in the bill.

The prospect is that we will have people in this country for a number of years between the cutoff date and the earliest possible implementation of a legalization program. Some recognition must be made that there are many within that population with well established equities, and I think that legislative formulas can be found, which not only give a legislative recognition of this problem, but some form of formula to deal with it as well over the coming years.

Mr. Chairman, one more point that is not contained in our written statement is that of the Haitians. I want to make a comment about that. We speak specifically of that class of Haitians that are already known to the INS, and are defined by H.R. 23, the Cuban-Haitian Adjustment Act.

The conference committee last year recognized the particular equities surrounding this Cuban and Haitian population. We have been working with Cuban refugees, as have my colleagues here at the table, since the early 1960's, and Haitians since the early 1970's. The churches and the religious communities have assumed great responsibilities here. I think this situation is well understood by the subcommittee, and I want to make a special appeal that if action is not taken on H.R. 23, that this bill, S. 1200, be made to include the H.R. 23 class.

The other points we make in our statement, Mr. Chairman, regarding employer penalties and temporary foreign workers, I leave for your questions. Let me just conclude by saying we believe agreement can be reached on legislation this year. We realize that the debate has shifted, and keeps shifting from one issue to another, to H-2, perhaps more importantly, and other questions, and the prospect of a resolution to those other questions is cause for optimism on our part, however.

Thank you very much.

[Statement follows:]

STATEMENT OF DALE S. DE HAAN ON THE IMMIGRATION REFORM AND CONTROL ACT OF 1985 (S.1200)

June 18, 1985

I wish to thank the Senate Subcommittee on Immigration and Refugee Policy for this opportunity to speak to the Immigration Reform and Control Act of 1985, S.1200. This marks the re-initiation of the immigration reform process, and we are hopeful that it will produce a bill which we can all embrace. It is our intention to be very active in the legislative process to ensure to the best of our ability that this happens. Some of the provisions of S.1200 we must oppose, particularly in the area of legalization. I want it to be absolutely clear, however, that where we differ with the provisions of S.1200--and we do have some important differences with the bill as written--we intend to recommend and work for practical alternatives which satisfy the need for immigration reform.

Our member denominations are very concerned about the state of immigration in this country. This is evidenced by the fact that many of our 31 member Protestant denominations have debated the issue of immigration in their national assemblies, and have adopted resolutions for their denominations on this subject. In 1981, the National Council of Churches itself went through a lengthy and agonizing process of considering the issue. This process produced the current guidelines for our work which are contained in a "Policy Statement on Immigrants, Refugees and Migrants" adopted by the Governing Board of the National Council of Churches on May 14, 1981.

These various policy pronouncements are the necessary basis of our comments on S.1200. In summary:

1. We oppose making the legalization program contingent upon the findings of a Legalization Commission, and we believe the program itself should be more comprehensive. For reasons outlined below, it is our belief that a simple, deferred legalization program is preferable.

2. There should be added to the bill remedies for discrimination which may arise as a result of employer sanctions and changes in INS enforcement procedures.

3. The temporary foreign worker provisions are prematurely far-reaching and provide inadequate protections against abuse.

I. A "STREAMLINED" BILL IS PREFERABLE TO THE OMNIBUS APPROACHES OF THE PAST.

We had arrived at the conclusion last year that a bill which seeks to do too much at once becomes administratively and politically problematic. The more streamlined approach of S.1200 is commendable in this respect.

We are particularly appreciative of the fact that S.1200 does not seek at this time to deal with the complex issues of adjudication procedures and asylum. It also appropriately puts aside for now the question of legal immigration. These questions can and should be addressed separately at another time.

II. THERE HAVE BEEN SIGNIFICANT RECENT DEVELOPMENTS IN THE FIELD OF IMMIGRATION WHICH SHOULD BE FACTORED INTO THE CURRENT DEBATE.

There have been a number of important developments in the field of immigration since the immigration debate in the 97th Congress and which have a bearing on the current round of discussions on the issue.

First, asylum backlogs have been effectively reduced. An examination of Immigration and Naturalization Service (INS) statistics on asylum cases pending before INS District Directors reveals that:

Pending end of FY 1983	165,998	total cases
	115,162	Cuban cases
	5,487	Haitian cases
	45,349	non-Cuban-Haitian cases
Pending end of FY 1984	138,598	total cases
	121,937	Cuban cases
	7,265	Haitian cases
	9,396	non-Cuban-Haitian cases
Pending April 1985	134,102	total cases
	121,988	Cuban cases
	6,445	Haitian cases
	5,669	non-Cuban-Haitian cases

(note: Cubans and Haitians generally should not be considered backlog cases as virtually all Cuban and Haitian asylum cases pending are for Cuban-Haitian Entrants.)

This is further indication of the appropriateness of removing from this bill discussion of this area.

Second, INS has stepped up significantly its enforcement programs and capacity. The Congress has been fairly generous in the past couple of years in appropriating additional funds to the Immigration and Naturalization Service (INS) for enforcement personnel and equipment. In FY 1977, for example, the INS spent $244,515,000. The anticipated appropriation for INS in FY 1985 is $585,031,000, a massive increase by any count.

Among the new programs and emphases of the INS in the area of enforcement can be found the Systematic Alien Verification for Entitlement (SAVE) Program; "Operation Cooperation"; increased workplace raids under the expanded authority and reduced restrictions on the use of evidence provided by the Supreme Court's decision in INS v. Delgado; increased cooperation between INS and state and local police in the conduct of such raids; and much more.

Third, a number of recent studies have taught us more about the undocumented population than we knew when the current reform process began. Recent studies and analyses conducted by the Urban Institute, the LBJ School of Public Affairs, the Congressional Budget Office, the Bureau of the Census, demographers, and others, provide evidence of the size and character of the undocumented population. From these we learn, for example:

> (a) The size of the undocumented population appears to be in the range of 4-6 million persons. While these estimates are imprecise (almost by definition), they do suggest that those estimates which place the population at 12 million, for example, are inaccurate.1
>
> (b) The cost of legalizing this population will likely be much lower than initially estimated. Earlier cost estimates by the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) contained a number of inaccuracies in the analytical models they used. For example, some analyses inappropriately used refugees as a paradigm for estimating participation rates for the undocumented population in public assistance programs. Others included costs in programs, such as Disability Insurance, for which persons are eligible even in undocumented status, programs which thus cannot be considered added costs as a result of legalization.
>
> However, the recent CBO estimates on the program rectify many of these earlier problems. In a report prepared for Representative Don Edwards dated February 27, 1985, the CBO estimates that, even with a January 1, 1983, legalization cut-off date and generous eligibility for assistance programs, the cost of legalization to the federal government will be no more than $4.5 billion over a four year period, and the cost to state and local governments no more than $2.7 billion over the same period. This contrasts with

> earlier estimates ranging from $8 billion to $13 billion over the four year period.

These comments are not to suggest that our immigration woes have passed. However, they do provide valuable direction in the revising of our immigration laws and policies, particularly when examining provision for a legalization program.

III. COMMENTS ON TITLE II: LEGALIZATION.

Title II presents for us the greatest problem with S.1200, so we will comment on it first. First, however, a restatement of the reationale for legalization is in order.

A. Legalization is an extremely necessary component of immigration reform. We would further argue that the program's rationale suggests that it be an inclusive program which intentionally encourages the participation of meritorious applicants.

Many of the arguments in favor of legalization are outlined in the Senate Committee Report of the last Congress on S.2222 (Rpt. 98-62). That report underscores the importance of legalization in (1) avoiding the "wasteful use of the Immigration and Naturalization Service's limited enforcement resources," (2) allowing "dependent employers to continue lawfully hiring from this (the currently undocumented) pool of labor," and (3) eliminating "the illegal subclass now present in our society" (p. 20).

We emphasize that the undocumented population is one in which the majority is well-integrated into our society. Studies show that they are working, pay taxes, and generally contribute to their communities.2 Our contact with this community is not only within the context of the workplace, but also the churchplace, as many within the undocumented community are active participants in churches around the country. With the exception of those cases which the INS may detect and deport, the vast majority of those who have been continually resident in the U.S. for the past couple of years are likely here to stay. The mass deportation of this group is simply not possible, and would raise serious moral questions as well.

However, we also believe that the status quo is not justifiable. Undocumented workers represent a large subclass outside the rule and protection of law. They are exploitable. Their presence discourages some employers from maintaining proper workplace conditions, paying adequate wages, and more. It is simply inconsistent with our member communions' beliefs, as well as the principles of a free society, that such people would willingly or knowingly be left in such a status.

Furthermore, a legalization program is necessary to "wipe the slate clean" with regard to our current state of immigration affairs. It is important that we have a fresh start and this includes getting rid of the enforcement backlog that the current undocumented community represents.

B. The subjecting of the legalization program to the findings of the Legalization Commission proposed in Section 201 may well result in increased enforcement, with no legalization.

While, no doubt, employer sanctions and other enforcement developments will have their impact, we submit that the effects of this enforcement cannot be measured adequately against an unknown status quo. It is precisely this "trick" that a commision would be required to perform. It will be extremely difficult--indeed impossible, in our view--for even a well-intended commission to document with any degree of rigor the categories of certification contained in S.1200.

First, to certify that we have begun to "control substantially illegal entry of aliens into the United States" (p. 67, line 21) is tremendously difficult to measure over time. Such a measure could be accomplished only if one were to compare apprehensions by INS from one year to the next isolated from world events or the ebb and flow of so-called "push factors." The number of apprehensions obviously varies from year to year depending not only upon the enforcement resources devoted to the border, but also upon the number of individuals seeking to cross the border each year. The latter is not constant, and is very much dependent upon economic and political developments internationally.

Second, it is, in our view, nearly impossible currently to document substantial deterrence of "violations of the terms of entry" (p. 67, line 23) of individuals--in otherwords, visa overstays. While the INS commendably has invested considerable resources to computerizing records of legal entries and departures, this system is far from current or complete. Clearly, the ability to document substantial deterrence in this area is largely dependent upon the effective functioning of this system.

Third, to certify the ability of sanctions to "eliminate substantially the employment of unauthorized aliens in the United States" (p. 67, lines 24-25) is probably the most difficult of the three criteria. To certify with any degree of certainty a change in this area would require a statistical knowledge of the status quo which simply does not exist. We simply do not know how many persons are working illegally currently. How can we measure the future against a present we do not know?

Fourth, even if changes in undocumented migration were measurable, the effects of the enforcement changes proposed in S.1200 will not be immediate. It will likely take several months before the sanctions mechanisms could be put in place. Furthermore, in order to measure their effectiveness, a commission would need to attempt measures and samples over several months--perhaps years--before certifying substantial change. If one considers the time it takes for sanctions to be put in place, for inspections to begin to occur, for the commission to get organized, for the commission staff to study the situation, etc., it is our estimate that some three years or more will have elapsed since the passage of the bill.

However, if it were determineed that a new or reissued identifier or a telephone verification system is necessary, these mechanisms, according the the Staff Report of the Select Commission could take as long as 13 years to reach a functioning level.3

Finally, the commission is required not only to certify the uncertifiable, but it also must report affirmatively that

> There is a substantial likelihood that these programs (of sanctions enforcement) will continue to remain effective after the implementation of the program of legalization. . . . (p.68, lines 1-4).

This, again, would require an educated guess on the part of the commission, as we have little knowledge of the effects of legalization programs on enforcement programs.

C. This does not mean that there is not some merit to a delay in the implementation of the legalization program. However, this delay must be specified in the legislation. Such an approach would be consistent with the recommendations of the Select Commission on Immigration and Refugee Policy, which state

> Recommendation II.C.3.: The Select Commission recommends that legalization begin when appropriate enforcement mechanisms have been instituted.

A delayed legalization would allow adequate time to prepare for the legalization program. There is obviously considerable and careful educational work to be done in the country in preparation for the legalization program. This work needs to be performed in both the undocumented and the documented and U.S. citizen communities. The undocumented need to be well-informed of the parameters of the program in order the maximize their confidence in it. The documented and U.S. citizen communities should be educated as to the purpose of the program in order to reduce the potential for backlash against the legalized and immigrants generally.

Furthermore, both the U.S. government and assisting organizations could use the preparation time. Regulations need to be written and promulgated, and procedures need to be developed. INS and community organizations will need to train and hire additional staff.

Finally, a delayed program, of course, will allow the INS to concentrate first on putting in place the enforcement provisions of the bill, then on the organization of the legalization program. Placing both responsibilities on the Service simultaneously would result in overburdening. The requirements of organizing a sanctions program, increased enforcement and training, and legalization all at once are beyond the reach of even the best-managed organization. In our view, given the traditional emphasis of the INS upon enforcement, it is legalization which would be neglected in this scenario.

D. The program should be more inclusive. The program, as currently designed, could limit participation by a significant percentage of the undocumented population. Let us cite three examples.

First, the proposed cut-off date for eligibility of January 1, 1980, would exclude from consideration a large percentage of the undocumented population. If one assumes as do many analysts that some 150,000-250,000 undocumented aliens remain in the U.S. each year, then a significant number of undocumented aliens would be left uncovered by the legalization program.4

Second, the requirement of continuous physical presence since enactment (Sec. 202(a)(3)), rather than simple continuous residence, is unduly onerous. The Supreme Court in Phinpathya defined continuous physical presence as meaning literally presence in the U.S. without interruption for a defined period. Thus, to impose this standard in this context would be to remove from an otherwise qualified legalization applicant the possibility of even brief stays abroad. There is no provision here even for temporary absences in extenuating circumstances, such as the death of a close relative.

Third, the use of the categories of exclusion under Sec. 212(a) of the Immigration and Nationality Act should be consistent with the character of the undocumented population. To name but one example, the undocumented status of many workers has required them to work below minimum wage. Technically, under current INS procedures, "likelihood" of becoming a "public charge" is decided on the basis of the poverty guidelines of the Department of Health and Human Services.5 The application of such a standard in the legalization context would fail to take into account this significant reality within the undocumented community. Therefore, Sec. 212(a)15, the "public charge" exclusion, should be applied in such a way so as not to exclude those applicants who may have low incomes--even below the poverty level--but who have evidenced self-sufficiency without reliance upon public assistance.

III. THE PROPOSED ENFORCEMENT PROGRAM SHOULD ALSO INCLUDE REMEDIES FOR DISCRIMINATION AND CHANGES IN INS ENFORCEMENT PROCEDURES.

Title I of S.1200 contains major increases in the enforcement capacity of the INS and the Department of Labor. The increased authorization for the INS to $840,000,000 is almost $300,000,000 above current levels, which in themselves represent major increases over the INS actual spending of as recently as FY 1983. In addition, the bill contains penalties for the knowing hire of undocumented workers.

Enforcement issues have been difficult ones for the Protestant community we represent. There are varying views among our member denominations on employer sanctions, for example, and many of our members are uncomfortable with the quantum and, at times, seemingly unregulated increases in enforcement within the INS.

Certainly, the fact that S.1200, unlike its immediate predecessors, contains civil rather than criminal penalties in employer sanctions are a help. Such penalties are more appropriate, in our view, to this type of offense. Furthermore, the specter of civil, rather than criminal, penalties, may just reduce somewhat the impetus for employers to discriminate in their hiring practices because of the sanctions.

Where there is strong agreement within our constituency is (1) for a mechanism for the redress of sanctions-related discrimination and (2) for the need for appropriate standards for INS enforcement activities within the context of the Fourth Amendment.

A. A mechanism for redressing discrimination is needed.

There is a considerable body of opinion and evidence that employer sanctions will result in increased employment discrimination. Some discrimination, such as on the basis of national origin or race, might be dealt with within the context of Title VII of the Civil Rights Act. However, for the most part that Act does not permit a sufficiently responsive mechanism to fulfill what we believe is a Congressional obligation to respond strongly to discrimination arising directly from legislation it might enact. In short, an affirmative obligation exists to address the potential for discrimination within S.1200.

One type of discrimination which may occur as a result of sanctions is on the basis of immigration status--the controversial "alienage" of last year's debate. As we assist refugees, immigrants, and those who will be legalized, it makes little sense to us to provide an immigration status to such persons and not protect that status against employment discrimination.

The Senate during the last Congress debated an amendment which addressed these concerns. We think it appropriate that such a measure be careful re-examined with a view towards passage.

B. The significant increases in INS' enforcement capacity should be accompanied by changes in INS enforcement procedures. A balance needs to be struck between the needed clear authority for INS officers to carry out their responsibilities to deport those in the U.S. illegally, and the protection of the rights of persons who come in contact with these officials. The frequency with which questionable activity has occured in this area prompts us to suggest that particular attention be given to the definition of procedures for questioning, arrest, search, and detention. Of particular concern is the lack of clear delineation within the Immigration and Nationality Act of standards for obtaining search warrants and the emergency circumstances under which warrants are not required. At a minimum, a belief by an INS officer that an individual is indeed an undocumented alien should be based upon specific, articulable facts.

IV. THE TEMPORARY FOREIGN WORKER PROGRAM SHOULD BE CONSIDERED A LAST RESORT.

S.1200 contains an extensive temporary foreign worker program for agriculture. It provides not only for an agricultural labor transition program, but also legislates "up front" an expansive temporary foreign worker program.

The risks of bringing a few hundred thousand additional temporary foreign workers each year cause us to side with the comments contained in the Committee Report on S.529 regarding the program.6 Certainly, a massive expansion of the program, such as is contained in Sec. 122, should be considered a "last resort."

One of the reasons temporary foreign worker proposals give us pause is the frequent reports from church representatives working with those in the migrant stream regarding the abuse not only within the stream generally, but also of H-2 workers specifically. Church workers in Florida report, for example, that as much as one-third of the H-2 workers in the cane fields in that State are injured on the job. In addition, the same church workers report that there have been frequent instances of the quick return by employers of injured employees without compensating those employees for their injuries. This suggests that serious attention needs to be given workplace and equipment standards and the practices of some employers before massive numbers of temporary foreign workers are poured into this type of labor.

V. CONCLUSION.

We wish to thank the Subcommittee for the opportunity to present our views on S.1200. Certainly, much more could have been said about the bill, both positive and negative. However, we wished to dwell at this time only on the main points.

Permit us to re-iterate our hope that agreement can be reached on legislation this year. S.1200 defines the agenda for a discussion in which we intend to be wholehearted contributors.

FOOTNOTES

1 See Jeffrey S. Passel and Karen A. Woodrow, "Geographic Distribution of Undocumented Immigrants: Estimates of Undocumented Aliens Counted in the 1980 Census by State," undated; and Courtney Slater, "The Illegals," American Demographics, January 1985, pp. 26-29.

2 See Passel and Woodrow; Julian L. Simon, "How Do Immigrants Affect Us Economically?," published by the Center for Immigration Policy and Refugee Assistance, Georgetown University, June 1985; "The Use of Public Services by Undocumented Aliens in Texas: A Study of State Costs and Revenues," by LBJ School of Public Affairs, 1984.

3 Select Commission on Immigration and Refugee Policy, Staff Report, pp. 609, 614, and 624.

4 See Passel and Woodrow; Congressional Budget Office letter of Rep. Don Edwards, p. 6.

5 see 22 CFR 42.91(a)(15)(iii).

6 see Senate Report 98-62, p. 18.

Constituent Bodies of the NCCC in the U.S.A.

African Methodist Episcopal Church

African Methodist Episcopal Zion Church

American Baptist Churches in the U.S.A.

The Antiochian Orthodox Christian Archdoicese of North America

Armenian Church of America (including Diocese of California)

Christian Church (Disciples of Christ)

Christian Methodist Episcopal Church

Church of the Brethren

The Coptic Orthodox Church

The Episcopal Church

Friends United Meeting

General Convention of the Swedenborgian Church

Greek Orthodox Archdiocese of North and South America

Hungarian Reformed Church in America

Lutheran Church in America

Moravian Church in America

National Baptist Convention of America

National Baptist Convention, U.S.A., Inc.

National Council of Community Churches

Orthodox Church in America

Philadelphia Yearly Meeting of the Religious Society of Friends

Polish National Catholic Church of America

Presbyterian Church (U.S.A.)

Progressive National Baptist Convention, Inc.

Reformed Church in America

Russian Orthodox Church in the U.S.A.

Serbian Eastern Orthodox Church for the U.S.A. and Canada

Syrian Orthodox Church of Antioch

Ukranian Orthodox Church in America

United Church of Christ

The United Methodist Church

Other Organizations Represented on the Church World Service Committee

American Leprosy Mission

Church Women United

Lutheran World Relief

Mennonite Central Committee

Seventh-day Adventists

Seventh Day Baptist General Conference USA and Canada

Southern Baptist Convention

Young Men's Christian Associations of the USA

Young Women's Christian Association of the USA

Designed by Michael A. Barnes

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST
IN THE U.S.A.

Policy Statement on Immigrants,
Refugees and Migrants
Adopted May 14, 1981

I

Introduction

The National Council of the Churches of Christ in the United States (NCCC), when it first addressed matters related to immigration and naturalization policies in 1952, stated: "The plight of the world's uprooted peoples creates for the United States...a moral as well as an economic and political problem of vast proportions."

Some of these "uprooted peoples" have been persons displaced by war, or are refugees from tyrannical regimes, and expellees and escapees from a variety of conditions. Others have been identified as "surplus populations"--those who cannot be supported by the economies of their respective countries.

Today more than 16 million men, women and children are refugees or have fled or been displaced from their homelands. There has been an appalling increase in the numbers of those who, despite changes in the world economic situation, have little hope for economic survival or well-being in their own countries. Nevertheless, the task of serving the immediate human needs of refugees, immigrants and migrants, as well as of changing basic social, economic and political structures in order to alleviate the conditions that promote migration--and of doing these things without abusing power--is a challenge that must be addressed.

The National Council of Churches in 1962 identified the "source of responsibility" of nations as well as persons for the welfare of such peoples: "God's sovereign claim upon all people has been proclaimed by the advent and example of His Son, Jesus Christ, in human society. Under God, persons and nations are responsible to each other and for the welfare of all humanity." (1962)

On that occasion, as well as on numerous others, the National Council of Churches affirmed that all persons, including migrants, immigrants and refugees, are endowed with "God-given dignity and worth," and that all in need must be viewed through the eyes of Christ. Christians have a unique motivation to participate, both corporately and individually, in the struggle for justice, human rights, and the alleviation of suffering. As people redeemed by the Cross and Resurrection of Jesus Christ and incorporated into Christ's Body, the Church, Christians are freed and called to serve their neighbors in the worldwide human family. The Bible has been and continues to be one of the primary sources of inspiration for the struggle for human rights.

The violation of human rights--civil,political, social, economic, cultural--often impels people to leave their homes and seek new ones. In a sinful world the quest for human rights frequently involves a conflict between rights.

People who are suffering the deprivation of their rights should be able to move to another land where they can pursue economic well-being, freedom and dignity. But those who already live in that land -- especially the working poor and the unemployed-- have a right to employment and to social and economic security. The tension among these rights should be resolved in the context of the stewardship of God's gifts, the knowledge that all resources come from God and are not the unqualified property of those holding them, and the recognition that all possessions are held in trust for the benefit of the human community today and in future generations.

The National Council of the Churches of Christ, through its Governing Board, reaffirms its commitment to those who are identified as the world's uprooted, pledging to minister to these sojourners and strangers and to champion their welfare. It reaffirms its commitment to work for a world in which the conditions of life for all are made more abundant, equitable and just, recognizing that Christians under God link arms with other people of good faith and join with secular institutions and organizations of good will in a common search for justice, dignity and the well-being of refugees, immigrants and migrants.

II

Policy Guidelines

1. The NCCC shall continue and strengthen its ministry to immigrants, refugees and migrants in cooperation with and through its member communions, church agencies and local congregations as well as other ecumenical, religious and secular bodies, both international and national.

2. The NCCC shall, in these humanitarian endeavors, continue and strengthen:

   a. its cooperation with agencies of the United States' federal and state governments responsible for processing and relocating immigrants, refugees and migrants;

   b. its constant advocacy for just, humane and equitable policies of the United States government with regard to immigrants, refugees and migrants, and the protection of their rights;

   c. its advocacy for the allocation by government agencies of adequate funds for the care and resettlement of refugees;

   d. its promotion of effective cooperation between the churches and government agencies in relation to immigration, while at the same time recognizing the need for the churches' moral and ethical perspectives and exercising care that the churches not become mere instruments for implementing U.S. government policy;

   e. its cooperation, both directly and through the World Council of Churches, with the United Nations agencies which have responsibilities in these fields;

   f. its encouragement of United States'government efforts to sensitize the world community to the United Nations' standards of protection of immigrants, refugees and migrants including adherence to the principle of non refoulement of refugees (protection of individuals seeking asylum against being forcibly returned to a country where they fear persecution) and in enhancing the United Nation's operational effectiveness by cooperating more fully with international efforts to address the pressing needs of immigrants, refugees and migrants all over the world.

3. The NCCC shall promote and encourage a United States' immigrant, refugee and migrant admissions policy which in both principle and implementation is non-discriminatory with respect to:

a. the elements of human equality contained in Article 2 of the Universal Declaration of Human Rights: race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; and

b. other elements of distinction such as: age, education, sexuality, physical or mental handicaps.

4. Although considerable progress has been made in eliminating racist provisions from immigration laws, the National Council of the Churches of Christ recognizes that immigration practices, including the granting of asylum, continue to have racist aspects. The National Council of the Churches of Christ opposes this discrimination, which denies particular ethnic groups equal justice under law.

5. The NCCC recognizes that requests for refugee status or political asylum in the United States have been denied on the basis of past political activity or political offenses judged criminal in the applicants' countries of origin. The proliferation of repressive regimes and the abrogation of the rule of law in some of those countries and the advances made in United States' laws in defining "crimes against humanity" call such denials into question in many cases. The NCCC calls upon the United States to base its decisions regarding such cases upon basic principles of United States' law, including "due process," "the presumption of innocence," and others that are relevant to these situations.

6. The NCCC recognizes that some immigrants, refugees and migrants are denied entry to the United States as a result of their past criminal records, as distinct from convictions for political reasons. Immigration policy should ~~never~~ NOT be a means of punishment for real or alleged crimes. The NCCC shall promote policies which will not discriminate against immigrants, refugees or migrants on the basis of past convictions for which the legal penalty has been paid, or there is evidence of rehabilitation. A consistent pattern of repeated offenses considered felonies under U.S. law may, however, justify exclusion after a careful evaluation of the case.

7. The NCCC opposes as unjust the system of restrictive national-origin quotas. Earlier national-origin quotas were eliminated in 1965. The NCCC recognizes, nevertheless, that current United States' law may still be susceptible to discrimination based on quantitative immigration country ceilings. It urges that all quotas be subjected to continuing scrutiny and periodic adjustment to assure that, while remaining deeply

concerned about the well-being of this nation, Americans be sensitive to the needs and aspirations of other peoples, such as the need for flexible policies with regard to immigration of citizens from Canada and Mexico.

8. The NCCC shall promote United States' immigrant , refugee and migration policies that protect and encourage family reunification, grant safe havens to refugees and provide for their settlement.

9. The NCCC shall encourage Federal and State agencies to treat immigrants, refugees and migrants with dignity and respect, granting status or benefits as efficiently as possible, and avoiding unnecessary restrictions on personal liberty. To this end, and to eliminate state and local abuses, federal authorities should assume exclusive responsibility for the enforcement of U.S. immigration law, and discrimination in social services based on immigration status should be prohibited.

10. The NCCC shall encourage participation of immigrants, refugees and migrants in the formulation and implementation of programs (resettlement, education and other services) which will affect their lives. The NCCC shall work for the equitable status, dignity and integration of immigrants, refugees and migrants and their families in the United States for the elimination of all forms of domestic discrimination in laws, regulations or practices which affect them; for the assurance that constitutional guarantees are accorded to every person physically present in the country or under United States' jurisdiction elsewhere, regardless of legal status; for safeguards against the application of punitive or retaliatory measures against persons present in the United States who are citizens of a state which the United States' government or individual United States' citizens may view with disfavor; and for the equal protection under the United States' laws of citizens, residents, immigrants, refugees and migrants alike, in particular, the laws governing labor.

11. The NCCC recognizes that millions of persons reside in the United States who, though not in lawful status, have established ties here and are making contributions to this society and the nation's economy. Efforts to search out and deport these people would be inhumane and would also pose threats to the rights of permanent residents and citizens. The NCCC therefore calls upon the United States' government to:

a. grant permanent resident status to overstayed/undocumented persons who have resided in the United States for a definite and reasonable period of time prior to a fixed date,both to be set by Congress;

b. seek ways to strengthen state and federal laws against exploitation of workers,

12. The NCC recognizes that the movement of immigrants, refugees and migrants across national borders almost invariably gives rise to conflict and competition for jobs, housing and social services. Some United States' citizens and permanent residents, especially those belonging to racial or ethnic minorities, already suffer disproportionately high levels of unemployment, and have legitimate cause for concern when large numbers of newcomers enter their job markets. Ending immigration or refugee resettle-

ment, however, will not automatically produce jobs for the poor. Unemployment is high in some areas where resettlement is low, and low in some areas where resettlement has been high. Short-term dislocations for individuals and communities are likely to result from any movement of peoples, but history shows that successive waves of immigrants, refugees and migrants have ultimately enriched the culture and enhanced the economic viability of the United States. Convinced that the influx of immigrants, refugees and migrants is not as primary a cause of unemployment in the United States as are domestic economic policies, which have a far greater impact on unemployment than does immigration, yet aware that high unemployment aggravates both real and perceived conflicts related to immigration, the NCCC shall:

a. promote resettlement policies which strengthen local communities rather than add to the burdens of areas marked by high unemployment, all the while taking into account the right to free choice of those being resettled;

b. continue and strengthen its efforts on behalf of the poor and oppressed citizens and residents of the United States;

c. continue to work for a decent wage for all laborers -- citizens, residents, immigrants, refugees and migrants alike -- and for the elimination of exploitative employment which encourages unfair competition;

d. work for legislation which would extend to all foreign migrants and temporary workers employed in the United States full and equal protection of their human rights, and such labor rights as collective bargaining, occupational safety and health, and wage and pension protection;

e. draw the churches' attention to the positive recommendations made in its Policy Statement on Full Employment;

f. renew its commitment to work for the establishment of just economic structures which would protect the rights of all United States' citizens and residents to full employment and needed human services; immigration restrictions found genuinely necessary to protect these rights should be relaxed when changed conditions permit.

13. The NCCC recognizes that many citizens of other countries seeking residence in the United States do not freely choose to leave their homelands, and that it must seek to deepen its understanding of the underlying social, economic and political causes of such emigration. It recognizes further that such conditions are often to a significant degree attributable to this country's policies and practices. The NCCC renews, therefore, its commitment to work for the establishment of just and equitable relations between the United States and other nations which would contribute to the well-being of all peoples and hence to the elimination of one of the possible causes of involuntary emigration.

BACKGROUND STATEMENT

Historical Background

A. The end of the colonial period in American history saw the creation of a new, independent nation with thirteen states. Although many national, ethnic and racial groups were present in the population, the young nation was dominated by English culture. Major Spanish and French colonies also existed in North America.

B. United States' immigration history reflects a massive movement of people with estimates of 40 to 50 million people arriving during the decades from 1820 to 1940. Some were brought as slaves, others arrived as indentured servants or contract laborers. Some fled persecution, some were summoned by relatives, some simply sought a new life, new opportunities or came as adventurers. While the motives were different, this mobility constituted a physical and cultural uprooting, with problems of identity and cultural assimilation.

C. The movement of peoples to this country in the colonial period stemmed primarily from western and northern Europe and, involuntarily from Africa. It was later augmented by immigration from southern and eastern Europe. Only in more recent decades has there been proportionately large movement from other parts of the world.

D. The movement of peoples has reflected world conditions such as war, famine and economic crises. Yet domestic conditions in the United States have also influenced the openness or closedness of United States' policy; there has been a constant interplay of push-pull forces.

Nineteenth Century expansionism had another feature often overlooked in the pluralistic nature of the American population: while immigration accounted for massive increases, geographical inclusion added vast numbers of others. This process of political incorporation often encompassed people whose allegiances were not easily transferred and whose cultural identities were not consciously changed or assimilated. The process often created distinct communities, including the Native Americans, the Mexican-Americans, the native Hawaiians, the Alaskan Inuits and the Puerto Ricans.

E. Among the internal movements and struggles which have made a significant impact on immigration patterns, one can identify the frontier movement filling the continent from east to west; the conflicts between systems based on slave and free labor; the transitions from an agrarian-based economy to an industrial-based economy and from a rural-centered population to an urban-centered population.

While conflict has occurred with Canada and Mexico, the extensiveness of the geographical boundaries made military control difficult. At the same time the relative degree of peace with these neighbors insured that "open" boundaries existed where a free flow of persons was permitted to occur across borders, not as new citizens but as neighbors.

During the early decades of this century there was an internal migration movement from South to North and West, reflecting further mechanization of agriculture. Today there is an internal migration to the "sunbelt" area.

F. Immigration to the United States has often reflected international and domestic economic conditions. Sometimes the immigrant stream has created conflict over jobs, services, housing. More often it provided needed labor in expanding labor markets, stimulating the upward mobility of existing labor groups. Though short-term dislocations for individuals and communities always result from the movement of peoples, United States' history shows that successive waves of immigrants and refugees have enriched the culture and enhanced the economic viability of the country.

G. Immigration history has been characterized by both hospitality and hostility. There has been racial and ethnic conflict frequently growing out of the prejudices, fears and interests of those present against those arriving. While the motives have varied, actions have often been brutal and shameful. The slave system was replaced by fixed patterns of legal, economic and social discrimination. Notable also are the Chinese Exclusion Act of 1882, the 1924 National Origins Act and the enforced relocation of Japanese-Americans to detention camps during World War II. Irish, Germans, Chinese, Japanese, Jews, Slavs, have each in turn served as scapegoats, obscuring the true nature of, and the required means to resolve, pressing social problems. At present, Latin Americans are being subjected to discriminatory treatment, including dragnet raids by the Immigration and Naturalization Service (INS).

H. In addition to conflict between the dominant American groups and the newcomers, there have been patterns of conflict and tensions within and among arriving ethnic groups themselves. These patterns reflect the differences between first-, second- and third-generation immigrants. Often they brought their political, economic and ideological conflicts to these shores.

I. Legal response to immigration has varied from time to time, in regard to the groups, the flow, numbers, origins and the "type" of people to be admitted. This has included restrictive legislation, e.g., the notorious "national origins" quota system.

J. American conceptions of their own immigration heritage have gone through varying ideological interpretations, each with its special significance. These have included concepts of the melting pot and the mosaic of cultural-pluralistic society.

K. In religious terms, there has also been a transition. Groups of primarily Protestant origin have been followed by those of Orthodox Christian, Catholic and Jewish faiths. Despite the fact that small pockets of other religious groups have been present in every period, only recently have there been sufficient numbers of people from outside the Judeo-Christian tradition to challenge the dominance of that tradition.

Special Aspects of the Present Period of American Immigration History

A. Introduction. Each period of American immigration history has had its own peculiarities. In the current situation, the United States is confronted with unprecedented problems, including the large number of persons residing in the United States classified as "undocumented" and another group classified as "overstayed." In addition, this refugee situation reflects for the first time in U.S. history, large numbers of non-European refugees with different racial, ethnic, religious and cultural origins.

The Immigration Act of 1924 established immigration quotas based on national origin that heavily favored northern and western Europe and completely excluded Asians and Africans. The Immigration and Nationality Act of 1952 perpetuated these quotas and simultaneously imposed many harsh and undemocratic provisions regarding exclusion, deportation, and citizenship cancellation. After extensive public hearings on the Act* in various parts of the United States, the Truman Commission on Immigration and Naturalization concluded:

> The immigration and nationality law embodies policies and principles that are unwise and injurious to the nation. It rests upon an attitude of hostility and distrust of all aliens. It applies discriminations against human beings on account of national origin, race, creed and color. It ignores the needs of the United States in domestic affairs and foreign policies. It contains unnecessary and unreasonable restrictions and penalties against individuals. It is badly drafted, confusing and in some respects, unworkable. It should be reconsidered and revised from beginning to end.

The Immigration Act of 1965 partially revised the 1952 law, making important and beneficial changes in the quota system while leaving intact other questionable provisions. At the same time, other changes made by the 1965 Act have either created problems or failed to cope adequately with problems that have arisen from new domestic and international conditions. An evaluation of the experience with the 1965 law, and with the provisions of the 1952 law that have continued unchanged, is part of the mandate of the United States Select Commission on Immigration and Refugee Policy. The Commission's findings and recommendations based on public hearings and research are to be submitted to Congress by Spring of 1981.

B. The legislative changes of 1965. A basic change in the immigrant selection system, the repeal in 1965 of the "national origins" mode first enacted in 1921, marks the beginning of a new immigration period.

Culminating a long public debate, Congress in 1965 abolished quotas based on national origin and made equal the allotments to all independent countries of the Eastern Hemisphere. Simultaneously, the 1965 law placed restrictions on all immigrants, including those from the Western Hemisphere. Those from any country seeking residence who do not have close family ties must secure a Labor Department certification that their labor is needed here. The 1965 law coincided with the termination of the United States-Mexico "bracero" program regulating the temporary admission of Mexicans for agricultural labor. Under legislation effective January 1, 1977, annual immigration from any country, including Mexico, is limited to 20,000. These changes in the law set the stage for classifying many law-abiding Mexicans tied by history and long-established close family relationships to free access to the U.S. Southwest as "illegal aliens."

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*At the hearings, opposition to the Act was expressed by Protestant, Catholic and Jewish leaders, and by the NAACP, the AFL and CIO, farm organizations, the American Bar Association and other groups. Members of the Truman Commission included the Solicitor General of the United States, the Chairman of the Board of Immigration Appeals and prominent Protestant and Catholic clergy.

C. INS apprehension of Mexican undocumented persons ("illegals"). In 1964, Immigration and Naturalization Service apprehensions of Mexicans not in lawful status totaled 44,000. Since then, annual apprehensions on the Southwest border have soared to nearly one million. Estimates of the number staying here permanently vary widely. Staff members of the U.S. Census Bureau evaluated estimates made in more than ten governmental and private studies. Their report concluded that most Mexicans come here temporarily to work, returning "to Mexico to live for part of the year," a circular flow which "has historically been a normal part of the labor-intensive segment of the economy in the Southwestern United States." The number of Mexicans residing here, according to the Census Bureau report, may possibly be "only 1.5 to 2.5 million" and the total number of illegal residents may be "possibly only 3.5 to 5.0 million" ("Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States," submitted to the U.S. Select Commission on Immigration and Refugee Policy, Janaury 31, 1980).

D. Overstayed and undocumented persons: social services and subculture. Even not counting Mexicans temporarily here, and assuming the accuracy of the Census Bureau estimate of illegal residents, the number involved is considerable. In many vital respects, such as health care and education for their children, overstayed and undocumented persons are cut off from normal relations with society as a whole. Even if it were feasible (which is open to question) to ferret out those not in lawful status, the uprooting of millions would be inhumane and the necessary procedures for attempting this would entail serious dangers to the civil liberties of the American people.

The U.S. Department of Labor's Linton Report finds the overstayed and undocumented persons "were far more likely to have participated in programs that involved the payment of taxes than the use of tax-supported services." Social security taxes were withheld for 77 percent of "illegals" and Federal income taxes for 73 percent. But only 3.9 percent collected unemployment insurance, 1.3 percent obtained food stamps and 0.5 percent secured welfare. A 1977 San Diego County, California, survey shows illegals paying $48 million in taxes and utilizing only about $2 million worth of social services in the country.

E. Amnesty and revision of the immigration law. The provision for granting residence to overstayed and undocumented persons is presently limited to those continuously residing here since June 30, 1948. In the context of granting amnesty, a Carter Administration bill in 1977 proposed granting legal status to those continuously residing here prior to January 1,

1970. No hearings were held on this bill. Instead, a law was passed in 1979 providing for a Select Commission on Immigration and Refugee Policy to make findings and report its recommendations to Congress by the Spring of 1981. The mandate of the Commission covers not only the issue of amnesty, but the entire spectrum of U.S. immigration and nationality laws.

The 1952 Immigration and Nationality Act repealed a previously existing time limit (a statute of limitations) on deportation of permanent residents. Since then, permanent residents living in the U.S. as long as 50 years have been deported on the basis of acts done 20 or more years before. The 1952 law retroactively made these acts a ground for deportation. In their old age, exiled to a foreign land, they are even deprived of the Social Security payments they earned while working here. Similarly, no time limit presently exists on revocation of naturalization. Proceedings to cancel naturalization have been commenced as late as 30 years after citizenship was granted. The statutes of the Federal Government and of the 50 states impose time limits for the commencement of criminal prosecutions (with few exceptions, such as murder and treason) and civil suits.

The 1952 statute also vastly extended the powers of immigration officials, authorizing them to interrogate any person "believed to be an alien," as distinct from having reasonable belief that a person is an illegal alien. On this basis, INS investigators continually conduct random dragnet searches ("area control" operations) on the streets and at bus stops, factories, residential areas and elsewhere. These searches have often resulted in the arrest and detention of permanent residents and U.S. citizens and, in some instances, their expulsion to Mexico and other countries.

F. Increase in number of refugees and changing composition. The increasingly unsettled world situation, coupled with the pressures exerted by repressive regimes, has given rise to the likelihood of a chronic condition of heightened refugee movement. The center of gravity of this movement has shifted from Europe. For all refugee groups granted asylum in the U.S. before 1960, 82 percent were from European background and 18 percent were non-Europeans. Since 1960, however, a dramatic change has taken place: 88 percent of all refugees accepted were from non-European areas and only 12 percent from European areas. The Refugee Act of 1980 eliminated the geographic limitations (refugees emanating only from the Middle East) and ideological criteria (only refugees fleeing communist regimes) of the 1952 Immigration and Nationality Act, and adopted the general non-discriminatory standards of the United Nations Convention and Protocol Relating to the Status of Refugees. Policy formulation, as well as implementation of the provisions of the Refugee Act of 1980, with respect to admission of refugees -- including that of Cubans and Haitians coming to the United States as the country of first asylum -- their resettlement and other aspects, remain areas of concern. The political turmoil, drought and other natural disasters in Africa have generated millions of immigrants, refugees and migrants. This is a problem likely to become more serious and to increase the danger of racial discrimination in the application of U.S. immigration laws.

Conclusion:

The growing movement of immigrants, refugees and migrants poses new challenges to the United States for the formulation and implementation of enlightened and practical policies consistent with conscience. Today, as in the past, it also offers rich new possibilities. It is against this background that the NCCC seeks in its Policy Statement on Immigrants, Refugees and Migrants to make a constructive contribution to the discussion and wise resolution of the issues involved which are of deep concern to the churches and to a broad cross-section of the American people.

Senator **Simpson**. Thank you very much.

Now, Hyman Bookbinder. It is good to have you present here, sir.

Mr. **Bookbinder**. Mr. Chairman, in good humor, I would like to be able to say that I am pleased to appear before you again, but frankly, I am not pleased at all. I am quite disappointed that the Congress failed——

Senator **Simpson**. You are going to scold me, I know. Lay it on.

Mr. **Bookbinder**. I am no more unhappy than you, having to go through this again. I am quite disappointed that the Congress failed last year to achieve that final agreement which would have put a good immigration law on the statute books, and would have put the names of Simpson and Mazzoli in the history books.

As I will soon discuss, I am particularly saddened at having to appear again today, because this time we are faced with a bill which, in some important respects, is clearly inferior to the bill passed by the Senate last year. Despite that disappointment, Mr. Chairman, we do have the highest regard for you personally, and for the subcommittee, and admiration for your commitment to immigration reform. It is a source of great concern to us that you felt compelled to make some drastic changes in the bill, in order to, in your judgment, improve the chances for passage.

The organization I am privileged to represent, the American Jewish Committee, will be celebrating its 80th anniversary next year here in Washington. At the time of our founding, in 1906, the United States was in the process of receiving a substantial wave of new immigrants, including, may I say, my own parents. Eight decades later, we remain convinced that generous, fair, and effective immigration policies benefit our Nation, and add vital new resources to our society. This has become a cliche to say, but I take great satisfaction in repeating that cliche today, in reminding myself and others on this day when some people, some reckless, irresponsible group in Lebanon, have chosen to demonstrate their dislike, their hatred for America by that outrageous hijacking of the TWA plane—that the greater truth is that we continue to be the country, like no other, in which millions upon millions of people around the world, perhaps billions, would prefer to live, and for years they have been voting for the United States with their feet.

They have come for many reasons: economic, ideological, but for whatever reasons, they have collectively added to our strength, our pluralist democracy, and our very character as a nation.

Just ask yourself how many people in the world today want to become citizens of Lebanon, or Iran, or Libya, or the Soviet Union, or Cuba. The list is, unfortunately, quite long. Even as we hail this proud history, of course, we do indeed recognize we cannot simply open up our door and say welcome to one and all, but as we proceed to improve, and reform our immigration laws, let us not forget the positive history, and our basic principles that many have forgotten; and let us resist the appeal of those who urge a restrictionist immigration policy.

Instead, we should be guided by three basic principles. One is the admission of generous numbers of newcomers. Two, is the protection of the integrity of the law by including effective enforcement measures. And, three, the provisions for fair treatment for all those affected by the law.

Now, last year, just to sum up quickly, this Congress created a very impressive balance, a balance of adequate enforcement procedures, and adequate, generous provisions for those who are already here. I am sorry that today I have to say that as we look at S. 1200, with all the good things in it, that that bill represents a retreat from that balanced approach and, as you can guess, our disappointment goes primarily to the changes in the legalization program.

In a word, what we are hoping is that you will give reconsideration to that measure, and establish a cutoff date closer to the time of enactment, and one which would not depend upon the subsequent findings of a commission, findings related to another aspect of the law.

We urge a comprehensive legalization program, so we may be in a position to concentrate our resources to the task of preventing future violations of our borders.

Another change, Mr. Chairman, we would recommend is a major reduction in the proposed guest worker program. Other witnesses will be giving more detailed and expert testimony on this area, but for the American Jewish Committee, let me say briefly that we should minimize the number of persons we should have living in our country at any time who are neither citizens nor eligible for citizenship. We do not need, and do not want a permanent and large third class of Americans.

A brief word on the Cuban and Haitian situation. For reasons that are similar to those which prompted our position on legalization, we prefer the Rodino bill provisions for granting legal status to those who have been here since before 1982.

Let me repeat in closing, Mr. Chairman, our high regard for your assistance and commitment to the cause of immigration reform. We may disagree with some of the elements in your new bill, but we are confident that you will give respectful attention to our recommendations for change, and we are even hopeful you may consider them worthy of adoption.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much.

And, please, now Althea Simmons, another very thoughtful observer of the scene, and I am sure her views will be received with great attention by this subcommittee, as they always have.

Ms. Simmons.

Ms. SIMMONS. Thank you, Mr. Chairman.

Thank you so much for allowing me to appear. I am Althea Simmons, director of the Washington bureau of the NAACP. We are speaking on behalf of our half million members, and 2,100 branches across the country.

The NAACP has been concerned about immigration for a long time. As a matter of fact, almost 30 years. We have routinely urged the Congress to do something about immigration. We believe in the benefits of a pluralistic society. We know that immigration is good for America, and we think that it should continue. We believe there is a need for comprehensive immigration reform that is fair, and does not jeopardize the basic civil rights.

We supported some portions of H.R. 5872 and S. 2222 last year, and opposed some others, but we do not believe, Mr. Chairman, that S. 1200 is the answer.

I know how disappointed you were, and we were, too, with reference to the defeat of the measure last year, but I do think there are some portions of last year's measure that could be incorporated in this year's bill. We hope you will give some consideration to that.

I will speak primarily to three issues: agricultural worker provisions, legalization and employer sanctions. We are concerned in my organization with the impact of undocumented workers on other disadvantaged U.S. workers, and, therefore, we support employer sanctions. Undocumented workers impact on the employment of low income workers.

The figures from May 1985 for blacks reflect that black unemployment was 15.6 percent compared to 6.2 percent for white Americans. Black youth unemployment in May 1985 was 40.4 percent compared to 16.1 percent for white youth.

Over the span of 29 years white youth unemployment rose only 1.1 percent compared with the increase of 22 percent for black youth. We think that black youths, who are already denied employment as a result of discrimination would be unnecessarily periled, as would adults, by the extra competition of H-2 and undocumented workers, who could be exploited by an employer who violates the Fair Labor Standards laws.

We believe the employer sanctions called for in S. 1200, properly enforced, could have a positive long-range effect on the U.S. labor market and the black labor force in particular.

We oppose any expansion of the H-2 program, because it would have a disparate effect on low-income black and other workers, for too many guest workers create unemployment in America for American workers, and increase unemployment costs for the Government.

We could take a look at Western Europe's experiment, and get ideas from that, as to how it has worked, and we know that such a program is fraught with major problems, such as the loosening of U.S. labor markets, and the depression of wages and working conditions for resident workers.

We are all conscious of the fact that practices in the agricultural area are not what they should be in some instances. I know I have had the occasion, from time to time, to go and to visit the areas, and to see how workers were exploited. Many of the guest workers are absorbed into our population, and become part of a permanent subclass, and I think that aggravates the problem of burgeoning undocumented workers.

NAACP is very concerned about legalization. The NAACP believes that we must have employer sanctions. We like the provision you have in the bill about sanctions. You have seriously addressed the problem. You have raised the level of fines, so that it is not a nuisance kind of thing, but where persons who knowingly violate the law would feel the force of the law.

The NAACP has some problems about the status of workers whose future would be held in abeyance, pending a commission response. We have very strong feelings about that. The NAACP believes that a delay in the amnesty program pinned to commission findings is unduly harsh and restrictive.

The NAACP reaffirms its opposition to the creation of subclasses of citizens, and urges that amnesty not be contingent on substantial control of the illegal entry into the United States.

We think there should be cap on immigration. We do not know what it should be, but there should be a cap, because our Nation must determine how many people our society, our resources can afford. I think that is going to be a very serious question for you as you grapple with legislation that is much needed.

The NAACP supports amnesty. We oppose expansion of the H-2 program. We support employer sanctions, and we would urge you to place criminal penalties for repeated violators.

We want to remind the committee that a failure to enact comprehensive reform will exacerbate the already bleak future for persons who are already on the bottom rungs of society. The NAACP of course, would be willing to work with the committee to try and see if we cannot help with some language for the measure, but also to try to help get comprehensive legislation passed. Mr. Chairman the NAACP appreciates the opportunity to come once again, to speak on behalf of its membership with reference to immigration reform.

Thank you, Mr. Chairman.

[Prepared statement follows:]

PREPARED STATEMENT OF ALTHEA T. L. SIMMONS

Mr. Chairman and members of the Subcommittee, I am Althea T. L. Simmons Director of the Washington Bureau of the National Association for the Advancement of Colored People. We appreciate this opportunity to appear before the committee on behalf of our 2100 branches, youth units, state and area conferences.

The NAACP has been interested in the issue of immigration for more than 30 years. We routinely urged the Congress to revise the McCarran-Walter Act in the 1950's; we commented on portions of the Report of the Select Commission on Immigration and Refugee Policy in 1981, and, Mr. Chairman, we have appeared before your committee several times.

The NAACP firmly believes in the benefits of a pluralistic society. We contend that immigration is now and has been in the past good for America. It should continue. We do believe that there is an urgent need for an immigration reform policy that is consistent, fair and does not jeopardize basic civil rights. The NAACP supported some portions of S. 2222 and H.R. 5872 and opposed others.

Mr. Chairman, the NAACP does not believe that S. 1200 is the answer to the immigration problem and we hope that the Chairman will take the best portions of his previous measure, recommendations of the Select Commission, and the concerns of affected parties and "beef up" the measure.

I will speak primarily to 3 issues - agricultural worker provision, legalization and employer sanctions.

Employer Sanctions

The NAACP is still concerned about the impact of undocumented workers on other disadvantaged United States workers, therefore we strongly support employer sanctions. The NAACP at its 68th Annual National Convention (1977) in St. Louis adopted the following policy statement:

"WHEREAS, the NAACP is concerned about the effect of employment of illegal aliens on employment opportunities of black citizens in these United States; and,

WHEREAS, legislation has been introduced in the Congress to curb the employment of such aliens; and,

WHEREAS, the proposed legislation raised serious problems of civil rights as well as civil liberties, including the use of identity cards for all citizens; and,

WHEREAS, the proposed use of such identity cards is fraught with dangers of abuse of official powers, THEREFORE BE IT RESOLVED, that the NAACP in Convention assembled, direct the chairperson, Executive Director, and its National Board of Directors to advise the President of the United States, the Congress, and through them all appropriate departments, agencies, corporations, businesses and individuals, of its grave concerns relating to illegal aliens, their unlawful employment and the need for assurance of full observation of the civil rights of all U.S. citizens when legislation is drafted to deal with this problem.

BE IT FURTHER RESOLVED, that the President and the Congress, through the passage and enactment of proper legislation call for the immediate cessation of the employment and use of all illegal aliens.

AND BE IT FINALLY RESOLVED, that the President and the Congress approve of the levying of stiff monetary and/or imprisonment penalties to be imposed on all persons, businesses and/or groups and organizations found to be guilty of violations of the employment and use of illegal aliens."

Undocumented worker do impact the employment of blacks. The figures for May, 1985 reflect that black unemployment was 15.6% compared to 6.2% for white Americans. Black youth unemployment in May, 1985 was 40.4% compared to 16.1% for white youth. Over the span of 29 years, white youth unemployment rose only 1.1% (from 15% in 1956) compared with an increase of 22+% (from 18% in 1956 to 40.4% in 1985) for black youth. Black youth, already denied employment as a result of discrimination would be unnecessarily periled by the extra competition of H-2 and/or undocumented workers who could be exploited by an employer who violates fair labor laws knowing that undocumented workers are loathe to complain because of their illegal status.

We believe that the employer sanctions called for in S. 1200, properly enforced, could have a positive long-range effect on the U.S. labor market and the black labor force, in particular.

Guest Workers

Mr. Chairman and members of the Subcommittee, the NAACP opposes any expansion of the H-2 Program because it would have a disparate effect on low-income black and other workers. The NAACP reaffirms its long-standing opposition to the so-called guest worker program. We believe with the high unemployment in our country now, there is no dearth of potential workers and there is a fear that we may once again embark on another "bracero" program by another name.

Too many workers create unemployment for American workers and unemployment costs for the government. We have but to look back to Western Europe's experiment with a guestworker program to put us on notice that such a program is fraught with such major problems as the loosening of U.S. labor markets and the depression of wages and working conditions for resident workers.

We are well aware of the impact of the guestworker program in our heavy agricultural areas and the discrimination that occurs among the guestworkers and the domestic worker in the produce fields; the inhumane housing and health conditions and the vulnerability of such workers to exploitation. Many of the guestworkers are absorbed into our population and become part of the permanent subclass which further aggravates the already thorny problem of a burgeoning undocumented workforce. With large numbers of unemployed, unskilled domestic workers today, the continued expansion of foreign workers program in reality creates a permanent foreign worker corridor in our labor force with the almost inevitable possibility that employers will ensure that the work conditions remain unattractive to the domestic worker thereby artificially creating a need for more foreign workers. This could be a never ending cycle. In essence, Mr. Chairman and members of the Subcommittees, the NAACP opposes expansion of the H-2 program.

Amnesty

Mr. Chairman and members of the Subcommittee, the NAACP urges your reconsideration of the section of your bill which severely disadvantages undocumented workers already in the country by placing them in a "non-status" posture. The NAACP believes that a delay in the amnesty program pending a Presidential Commission's findings is unduly harsh and restrictive. The NAACP reaffirms its opposition to the creation of subclasses of citizens and urges that amnesty not be contingent on substantial control of illegal entry into the United States.

In conclusion, Mr. Chairman and members of the Subcommittee, the NAACP supports comprehensive immigration reform which is fair and just.

- we support amnesty
- we oppose expansion of the H-2 Program
- we support employer sanctions

We remind the committee that a failure to enact comprehensive reform legislation will exacerbate the already bleak future of low-income Americans, a disproportionate number of them are black, and dramatically widen the gap between black and white unemployment.

Thank you for this opportunity to present our views.

Senator **Simpson**. Thank you very much, Ms. Simmons.

Let me have a few questions here, and review those. I come back to Reverend Dimarzio.

You were saying that the Catholic Conference is resisting, or opposing employer sanctions, because enforcement will fall disproportionately on employers employing Hispanics, and on all employers in areas of high Hispanic concentration. Is that not the situation today?

Reverend **Dimarzio**. Discrimination exists probably at the present time. The fact that this type of sanction provision will increase it is probably an unknown quantity, but the very fear this may happen makes us very hesitant to endorse this kind of proposal.

The second part, and it has been well expressed, is the delay between the imposition of sanctions and legalization is something we are very much concerned about, the plight of the people in the meantime, and that period is what is also our concern.

Senator **Simpson**. Let me ask you this. Employer sanctions are a part of the laws of most western democracies, with the exception of Great Britain. Recent reports, as well as testimony before the subcommittee yesterday, some today, indicate that none of these countries have apparently experienced increased discrimination as a result of employer sanction laws. This even includes such ethnically and racially diverse nations as France.

I sense a degree, perhaps unwittingly, of almost certainty and positiveness, that employer sanctions will result in increased discrimination here in the United States, and what I would ask you, as you review that, have you conferred with your counterparts, and your Catholic bretheren in France concerning the discriminatory effects, if any, of employer sanctions?

Reverend **Dimarzio**. That is not something we have done.

Senator **Simpson**. Might I respectfully suggest, with the Catholic Brotherhood of the World, that would be something to draw on, their comments of what is happening in France, a very diverse ethnic nation, with employer sanctions in place, and difficulty with illegal, undocumented persons, and difficulties with temporary workers, for example, the Turks. I would be interested, and I would be glad to assist with our personnel, to see what we find in that situation. I think that might be worth while.

Reverend **Dimarzio**. We would be happy to investigate that. I just feel the comparison between the United States and France is a very difficult comparison to make, just not of numbers and proportion of foreigners in proportion to the resident populations, so that comparison would have to be carefully made.

Senator **Simpson**. I think this would be so, but I also know there are employer sanctions, and if there is discrimination, that would arise there, and it might be worth probing that in Germany also, to see through the Catholic Brotherhood, and that population there, what they are perceiving as concerned clergy and citizens.

I would be interested, and I would be willing to work on that, because I think that is important, because we hear it, but we do not ever find anything much about it.

In the discussion of temporary agricultural workers, you were saying that there is opposition to the temporary worker provisions, because of the concern about safeguarding the "full social and economic rights of domestic workers, and protecting foreign agricultural workers against exploitation."

Certainly, I said yesterday that this bill is not the great study in perfection. I gave that up long ago. I can tell you a lot more about my imperfections than I can tell you about my perfections, and I would, to a person of your persuasion.

However, that is what you hear most of the time, is it not? You do not hear much about perfection, do you? I cannot remember them, but I can sure tell you about the other ones. [Laughter.]

We are seeking reason, and not perfection, that final perfection is not for us here. But here is my expression of irony. How does the present status quo in the United States of America, "protect the foreign agricultural workers against exploitation?"

What can you suggest to us then that is politically feasible to address the just and legitimate needs of agriculture, while improving conditions of domestic workers and undocumented foreign workers? How do you weigh the legislation, flawed as you may honestly and conscientiously believe it to be, against conditions which exist in the United States of America today, and do you then choose to continue these conditions?

I have trouble with that. I do not know your position on this.

Reverend **DiMarzio**. It has been the position of the Conference for a long time now to even deplore the present conditions, obviously, and also the present H-2 Program, where a certain part of these conditions are verified, the difficult conditions. The worst problem, as you refer, is to the uncontrolled migration people who come to do temporary agricultural work. It is our concern, and that is our primary concern.

Our problem is that the present proposals do not go far enough in trying to really get to the problems that are there. I think we would be willing to discuss the improvement, but a real improvement has to be verified, and we see in the present proposals we have not gone far enough to really defend and to clean up the situation, defend the workers' rights, and to clean up the situation as we see it, as one which is deplorable and certainly we do not want this present situation, but in light of not having a better option, we do not feel this option is worth pursuing, unless we take it further.

Senator **Simpson**. Yes, and yet five Presidents, and one Commission, have determined that employer sanctions are the only way it ever gets done, or will get done. How do you just disregard that?

Reverend **DiMarzio**. We are willing to entertain the position of sanctions, but only in conjunction with the legalization, which is contemporaneous. We believe that is one mechanism. It is not the only mechanism. But if that is what has to be done in order to bring about legalization and starting to address the whole problem, we are willing to talk about that.

But, at the same time, we cannot accept it without talking about the second part of it.

Senator **Simpson**. No, nor do we, but we also know that unless you have employer sanctions, then when you have legalization, you are just going to have another one, and another one, and another one, and you have nothing in that situation. You would be back where you were.

Reverend DiMarzio. Employer sanctions, once put into effect, could be a possible deterrent, but legalization has to come along with that contemporaneously. That is our position.

Senator Simpson. That is at odds with the Select Commission. We should be assured that the systems were working before legalization came to pass. That was a 16-to-nothing vote on that.

So what we have here is a return really, in one sense, to the Select Commission's unanimous vote, and that is presently in S. 1200.

But I do look forward to working with you, and indeed, Reverend Bevilacqua is a thoughtful individual, and you, sir, are also.

I have some questions here for Dale de Haan.

Does this seem familiar to you, watching all this staff activity around here?

Mr. de Haan. Very interesting. It has not changed much.

Senator Simpson. You did this for about 15 years, with Senator Hart and Senator Kennedy?

Mr. de Haan. A long time.

Senator Simpson. Indeed, you do know what Hell is. [Laughter.]

Mr. de Haan. You are putting it graciously, Mr. Chairman.

Senator Simpson. With your long work in there, I have come to have great admiration for you, and what you share with us, and you have been very helpful.

In your testimony you stated that one of the reasons it is desirable, that is, legalization is desirable, is to wipe the slate clean, and then you do indicate your opposition to delaying legalization until enforcement can be certified as being effective.

What if our initial enforcement mechanisms are not effective? Would not then illegal entry and visa overstays only continue, and thus smear that clean slate again in a very few years?

Mr. de Haan. Well, I think you make a good point there, Mr. Chairman, but I think we have to—this is why we have mixed views on sanctions, for example. And as you know from our statement, we talk about the mixed views within our constituency.

Our main concern in the area of sanctions is the question of what is called discrimination here, but I prefer to call the issue "protection." I just refer to the comments in our statement there about the alienage question, and the kinds of efforts that were made, I believe, in the conference bill last year. But I think it is a protection issue, a protection of people.

I mean, we cannot have perfect laws, and we know that. Over the period of the last 200 years laws have had to be changed with regard to immigration enforcement, and so forth. I think that we wipe the slate clean, and we start over. We have to bite the bullet on this. We cannot dribble along. This has been the issue ever since this issue came up way back in the 1960's and 1970's, and there has been this argument about how far do we go. I have long been convinced that if we have sanctions which provide protections for people in the context of immigration status, immigrant status, the alienage kind of thing, and I do not want to go into the criminal and civil, and all that, but some form there, and if we have some kind of enforcement, the kinds of things that are being done, the Immigration Service must enforce, we would also have to be concerned about civil liberties here, for example, fourth amendment concerns, and a lot of other things which all of us are well aware of.

But the fact that, you know, we may have some more illegals, so-called, 10 years from now, or 15 years from now, should not—should not—prohibit us from trying to form a law today which will move us along on this important question, which is the origin of our country.

So, you know, these things are both important, but I think it has to be put in the context Mr. Bookbinder described of our history. I think if we do, which I think we can, I see no reason in the world why we have to be paranoid about the future. We should try to be positive about what we do.

Senator SIMPSON. Indeed, indeed, indeed. The origins of our country, and that is where the conflict comes. We want to do something about illegal immigration, at least 80 to 90 percent of the people in America indicate that, but they really do not, because they remember their own heritage, and yet with some glaring exceptions, such as people who were brought here in the holds of ships as slaves, most of them came here, at least in the last decades, as legal immigrants, and that is a different situation in a country of equality and equal rights and respect for human dignity.

It is very difficult to give that to people here illegally. At least we find that painful conflict, the schizophrenia that goes with this great caper, and so it is tough enough to make the definitions, but here again we are addressing the issue of illegal immigration, not legal immigration, not our heritage, not the Statue of Liberty, and that is what makes the issue such a grisly one.

Mr. DE HAAN. Mr. Chairman, I totally agree with you. I do not disagree with you on that at all. There was some reference made by some of the witnesses yesterday about public opinion polls, and a host of other things, and there was some dialog on that. I came away with the feeling that we need some leadership here on this question of wiping the slate clean, as I like to call it, and I think the Congress can take the lead on this.

I would wish the President of the United States would contribute to this as well, because we can afford to be generous. We can afford to be generous, I know, from going across this country just in the past several months, to California, to Minnesota, to Georgia, Michigan, to Florida, all over the place, to Texas, anywhere I go, I find that when we talk about the people, the humanitarian issue here, the churches that I speak with, the church people, the ecumenical councils, the religious community across the board, they may argue about criminal and civil penalties, or no penalties, they may argue about various kinds of things, but when it comes to the question of equity and humanitarian concerns, and the issue of legalization, there is very, very little opposition that I detect, to wiping the slate clean. That is why I underscore this business about 1980 or 1982.

You know, those dates are going to be put in there.

Senator SIMPSON. I hear that totally, and I know——

Mr. DE HAAN. I keep saying we have to have some legislative recognition of those people who are cutoff, because what happens to those people? We are not going to have mass deportation, we know that, and I think we do not want these people to be sitting and festering in the lower sublevels there. I think we have to have some recognition of their problem, and perhaps come back with a report from the Immigration Service, or the Attorney General, as to how to deal with this, or try——

Senator SIMPSON. We will be revisiting it, especially after legalization.

Mr. DE HAAN. We need a very generous approach, particularly on the human issue of legalization.

Senator SIMPSON. I, indeed, agree, but I also say I do not think that the slate can remain clean, if we do not have enforcement machanisms that are appropriate.

Mr. DE HAAN. We support both.

Senator SIMPSON. Yes, I know you do.

Yesterday there was a review of triggered legalization, and the possible unworkability of it. Austin Fragomen testified as to the totality of events test, which was a combination of not a single factor. He mentioned a number of visa visitor issues.

Therefore, you could compare their apprehensions obtained through operation of employer sanctions, and other apprehensions, a number of visa overstays, as we coordinate the exit and entry visas as a control, the number of illegal persons applying for social benefits, unemployment rate of U.S. workers in certain types of occupations.

There was no single factor, but all of those in totality, could be done. Would you care to comment on that?

Mr. DE HAAN. I did not hear Mr. Fragomen's statement. I prefer not to comment on that, really, other than that is what is in our statement. We do refer to some of that in the statement.

Senator SIMPSON. Take a look at that, and share with me your thoughts.

Mr. MYERS. May I make a couple of comments on that?

Senator SIMPSON. Yes.

Mr. MYERS. I think there are a couple of factors that have to be taken into consideration with any kind of test of that sort. One is that all of those measures that you mentioned are measures in which you are comparing the future with the status quo, and as we indicate in our statement, we just do not know what the status quo is.

How do we compare with something——

Senator SIMPSON. Today we do not know what the status quo is?

Mr. MYERS. We do not know the status quo in terms of the number of undocumented hires.

Senator SIMPSON. We do not know the numbers, but we know what the status quo is.

Mr. MYERS. Numbers are basically what you are talking about in any test of that sort.

The second comment I would make is, in all of these kinds of factors, such as you just listed as being proposed by Mr. Fragomen, immigration is not the only factor affecting those particular issues.

If you are talking bout the marketplace, there are a host of other factors. So there does not really exist any kind of constant which a commission could be use to measure a substantial change. It would have to be mere postulation at that point.

Senator SIMPSON. I appreciate that.

Just a final question. You testified that there is evidence, "evidence that employer sanctions will result in increased employment discrimination."

Would you please describe briefly what that evidence is?

Mr. de Haan. Maybe evidence is too strong a word. I think elsewhere in there we talk about the potential for discrimination, and I think that that basically is what it is.

I do believe very strongly that it does add a new factor to the potential of discrimination. I might add here, Mr. Chairman, that I have talked with some of our counterparts in Europe, in the World Council of Churches, and some of the national churches in Europe, particularly in Germany, with respect to the laws there.

I want to assure you—I want to assure you—that there is discrimination there against Turkish people, for example, and particularly in Germany, against Bengali——

Senator Simpson. Discrimination in employer sanctions, or discrimination?

Mr. de Haan. Discrimination in the workplace.

Senator Simpson. There is discrimination, I believe that deeply.

Mr. de Haan. But in the whole question of work, I mean, they have very complicated laws there. I am making generalizations here, but this question of employer sanctions, which they do have, I think there is evidence that this does produce discrimination over there, and I certainly believe it would here, and that is why we are so strongly in favor of this protection, as I call it, this alienage.

There is no reason in the world, if we try to ensure protection for people, because of race, creed, color, whatever, why not immigrant status. This is an old battle in the Congress. We used to put it in the laws all the time, but then somewhere along the line these things started to be lifted, and I think we ought to go back to the time when we considered these people as potential citizens of this country, and we should treat them as such.

So I strongly plead, because I think this helps us to put the obligation where it belongs——

Senator Simpson. I have not the slightest doubt that there is discrimination among persons now in the United States, illegal, undocumented persons. There is not a question in my mind about that. Anybody that does not feel that that is going on, step out for a draft of air.

OK. What I am saying is if you have evidence that employer sanctions will result in increased employment discrimination, I would appreciate your sharing that with me.

Mr. de Haan. I like to err on the side that suggests that there is a potential there.

Senator Simpson. I know. Perfection again is difficult to attain.

Mr. de Haan. We make laws to educate people, to educate the public, and society, and ourselves. I just think that when there is any possible question of a person being discriminated against, or not being protected in the context of the implementation of the law, I would strongly advise members of the Congress that they should err on the side of too much language, rather than none.

Senator Simpson. By doing nothing we are really erring on discrimination, so I think we agree with that.

Let me ask you one other question that is important, because you speak of the Refugee Act, and some refugee issues, and you were involved in, I think, the participation of putting that together.

But the Refugee Act of 1980 set forth uniform criteria for use in evaluating requests by persons of all nationalities for refugee status. You mentioned the status of the Cubans and Haitians.

Would you then support, at the same time, the repeal of those special privileges, more favorable treatment than we afford to nationalities of any other country, which current law provides to Cuban nationals under the Cuban Adjustment Act? How do you feel about that?

Mr. DE HAAN. I am sorry. I misunderstood what you said.

Senator SIMPSON. You were talking about uniform criteria.

Mr. DE HAAN. That is right.

Senator SIMPSON. And that is what is on the books. I would say, would you support at the same time a repeal of the special privileges, which is more favorable treatment, than we afford nationalities of other countries, and the specific example of that is the current law with regard to Cuban nationals under the Cuban Adjustment Act?

Do you favor repeal of that then, when we go to the other uniform aspects, or keep them both?

Mr. DE HAAN. I mentioned the Cubans and the Haitians because—and it is particularly the Haitians, because the Cubans' status is being adjusted today. We are involved in that, as is the U.S. Catholic Conference, and others.

I mentioned the Haitians because they are a special group of people, which all of us know about, and I was just trying to suggest, I hope, that they do not get lost, you know, down the line somewhere, these 2,000, or whatever the number is.

Senator SIMPSON. Let us leave the Haitians out, and come to the Cubans. How do you feel about them? If we are going to have one, then we need not have the other, is that not correct? Or do we need both of those protections, one a special privileged protection?

Mr. DE HAAN. I think if the Cubans can be adjusted under the 1967 act, if I understand you correctly, I think they should be, and they are being adjusted.

I mentioned H.R. 23, because if it is not passed to cover the Haitians, that they should be included, because it is very well possible the Haitians may be beyond the cutoff date of 1980, or something like that. I do not think that is a special kind of a thing there. I think we have to recognize the Haitians were a special group at the time.

Senator SIMPSON. I am not speaking of the Haitians. I am speaking of the Cubans.

Mr. DE HAAN. Cubans and the Haitians.

Senator SIMPSON. Special law.

Mr. DE HAAN. We called them entrants in 1980. They should be treated the same, not differently.

Senator SIMPSON. I look forward to working with you, as in the past, on that, and it will be important that we do that.

Let me ask a question or two of Hyman Bookbinder, if I may, sir.

I notice throughout your statement you expressed a concern, a very sincere concern, about the immediate and broad legalization, and the necessity for that. Yet, really only a passing reference is made to new enforcement measures, and yet you do mention that, but employer sanctions is not mentioned once.

If we are going to be intent on our duty of maintaining a generous portion, or program of legalization, and I am committed to that, as you know, do you not feel that an effective program of enforcement, including employer sanctions, must be initiated?

Mr. BOOKBINDER. Well, Mr. Chairman, you are compelling me once again to say openly and publicly something that I am not particularly proud of, but I want to tell the truth. The truth is that my agency is split down the middle, almost exactly down the middle, on the wisdom of sanctions.

Our position comes to this. I have said it before, and I will say it again. We are not opposed to sanctions, in the sense that we will not urge the rejection of a bill that includes sanctions, but neither can I feel free to say to you that we urge it be in it.

But there is something that we add to that observation, which is that looking at the national situation, the opinion of many important groups in our society, the political picture in the Congress itself, we assert—I assert, in any case—that the genius of your bills to this point has been that you wedded two very important principles, and made it possible to get the kind of coalition we thought would actually result in legislation last year, and the year before that.

We heard, just in this panel itself, from our Catholic colleague, something that has to be accepted as a fact, like it or not. The fact is that in a major group in our community they are saying that if you are going to have sanctions, and as I understood the testimony, there is not really an absolute objection to sanctions, but they are saying if you are going to have sanctions, then have the kind of impressive and generous legalization program that will make the combination of the two acceptable, and that is exactly my position.

Mr. Chairman, before you ask me the question, I am going to answer another one for you.

Senator SIMPSON. Even one I have not asked.

Mr. BOOKBINDER. Because I want to be sure that it is in the record. There may or may not be evidence, credible evidence that sanctions would mean additional discrimination, and I think your persistence at asking the question is exactly right.

But one thing I do know, Mr. Chairman, because I work in coalitions, and my job is to be involved in intergroup relations, I can tell you as a certainty that there are many people in the Hispanic community, and other communities, who are today persuaded that there will be such discrimination. That is not the same as saying that there will be, but it is also a fact of life, and therefore, in order to make the bill acceptable, and in order for the legislation to be acceptable, and accepted in good faith by large elements in our population, I think we ask you and your colleages on the committee to go that extra mile in assuring our citizens that there will be a minimal, if any, amount of discrimination resulting from sanctions.

Senator SIMPSON. I listened to that answer to my nonquestion. That was good.

Mr. BOOKBINDER. Now, what is your question? [Laughter.]

Senator SIMPSON. My question is this. Then would you not say that without any question whatsoever, with the status quo in the United States as it is today, that discrimination is very real and evident?

Mr. BOOKBINDER. Oh, yes, there is discrimination. It is evident.

Senator SIMPSON. That is real, is it not?

Mr. BOOKBINDER. That is real.

Senator SIMPSON. The other is not real, yet.

Mr. BOOKBINDER. I concede that. We have no way of establishing with certainty that sanctions themselves would add to the discrimination.

Senator SIMPSON. But we sure know right now, today, in the United States of America, with the Texas proviso on the books, and 1,200,000 apprehended at the border, and 2 million to 12 million people here, there is surely discrimination going on in the United States against these people.

Mr. BOOKBINDER. Yes. I do not quarrel with you on that.

Senator SIMPSON. Not many do.

Mr. BOOKBINDER. At the risk of repeating myself, I do not come as an immigration expert, in knowing the details. We are human relations people, and I plead with you, Mr. Chairman, and your colleagues, to give maximum consideration to an attitude out there in the community. I believe there are many people in the community who would say yes to sanctions, and yes to the legislation, if it were matched by a generous, compassionate legalization program. I think that is the reality in our country today.

Senator SIMPSON. I do hear that, and as a humanitarian myself, I wish somebody would walk in and testify some day the honest way, and just say—not anyone at this panel, but just say I like the status quo. [Laughter.]

Instead of giving me all this applesauce that goes with it. Just come in and be honest, and say I like the way it is right now, today. It is good for my business. I like it.

Mr. BOOKBINDER. Therefore, no legislation is required.

Senator SIMPSON. Then do nothing.

Mr. BOOKBINDER. That is certainly not my view.

Senator SIMPSON. You see, that would be an honest response from some who really do like the status quo, but they do not say that. They come in and say we do not like the status quo, but we do not like this, and we do not like that. This is good, true, but, oh, mercy, this is terrible, and this was good, so things change, and they will come up with a new one. If you change something, they will pick something else.

If you left employer sanctions out, and just said there would be no employer sanctions, but we are going to have immigration reform, they would come up with something else like a peg board. I have seen this very wily bunch. So I am just saying that is part of the frustration, because the status quo in the United States of America ought to offend anyone who is of a humanitarian leaning of any kind, and that is what we are talking about.

We are not talking about section 204(d), whether this works right. We are talking about what is going on in the USA today, which is pretty crappy.

Now, with that outrageous statement, let me just ask one further question.

S. 1200 would increase border enforcement, and create new interior enforcement positions for the purpose of enforcing the employer sanctions. But because sanctions only apply to the hiring of illegal aliens, after the bill passes, and border enforcement only affects new entries, why do you feel that S. 1200 then would be concentrating somehow on apprehending long-term illegal residents, who would otherwise be those who would qualify for legalization? Why would there be any of that?

Mr. BOOKBINDER. I do not reall where in my statement I implied that. In any case, I am for maximum appropriation and enforcement of border control. There ought to be absolutely no cap. Whatever the authorities say is required, ought to be made available.

Senator SIMPSON. Nobody objects to that solution, either.

Mr. BOOKBINDER. Maybe I misunderstood your question.

Senator SIMPSON. No. Why do you think then S. 1200 would concentrate on apprehending long-term illegal residents?

Mr. BOOKBINDER. My concern with S. 1200 is it would leave a pool of a very large number of undocumented aliens without a future, and, therefore, having to live in this country the way they have been living, with children who are citizens, but whose parents are in a gray area of existence, and I repeat for the last time, as an intergroup relations agency we find intolerable, indefinite continuation of various classes of people living in this country.

Senator SIMPSON. Indeed, and I think the comment, Hyman, came from Howard Friedman in his letter to the subcommittee, and that is where I got that impression of it, not from you, sir, or your testimony.

What we see is you do not hear anybody now saying that we need less enforcement. You want to watch that carefully. No one says cut the Border Patrol, cut the INS. Without exception, everybody in the United States is saying more money for the INS, more positions, even the military presence, perhaps, more Border Patrol, and that is what is there. And that is what is out there. That is alternate No. 2.

We thought we would try the humane approach first, which is to reduce the magnet of jobs. We may not get that done, but we will go the good old American way on the next one, which is just beef up everybody, and get ready to enforce our laws, which is the Texas proviso, which would drive anybody goofy. So that is where we are in the United States right now.

Now, if I may, Althea Simmons, you have been a consistent ally, and I sense your concern about the Legalization Commission, and yet, Father Hesburgh, former Chairman of the Commission, stated that the three key elements of immigration reform would still be employer sanctions, improved worker verification and legalization.

Indeed, you support the first, and the last, with clarity, and I wonder if you could review your impressions of the use of a counterfeit-resistant, revised Social Security card, as a means of worker verification?

Ms. SIMMONS. Mr. Chairman, the NAACP has strong feelings with reference to the use of any kind of identification that would lead to discrimination, that is why we proposed sometime ago that it might be a good thing to consider using something everyone has to use, the Social Security card. Nothing is foolproof, but I do believe that it is possible to issue a Social Security card, on the type of paper that would make it as nearly foolproof as our dollar is.

Senator SIMPSON. Let me ask another question.

You stated, and you have stated that clearly, that the NAACP opposes the triggered amnesty. But I know you, and I know you have always been very supportive of controlling illegal immigration for 30 years, because you recognize, indeed, as I do, that those on the lowest rung of the economic ladder are impacted most heavily, most often. I believe that, and yet this was never put in as a jobs bill.

But the Select Commission found that without more effective enforcement—that is their quote—more effective enforcement, this legalization will likely cause new and increased illegal immigrants. Most people testified to that, that that is what legalization will do, whether it is immediate, or whether it is triggered, that it is going to create a swell, and that the legalization may be less than successful.

How can we then, without some type of triggering approach, know if we have more effective enforcement? How do we know if we will not only make the situation of illegal immigration ever worse in that process?

Ms. SIMMONS. Mr. Chairman, I think we are going to have to take the chance. Our Border Patrol is not good. I have lived in California. I call that home, as a matter of fact. I know how lax we have been on patroling our borders. Until we get a grip on it, we are going to have to have problems, but we must have some forward movement. We are not going to deport large numbers of persons, we know that, so why do we not legalize the folks already here, and have the strict controls in the future?

But I do not believe that there is going to be a magic, Alice in Wonderland, kind of solution. We are going to have to start some place. Here is where we start, and move forward.

Senator SIMPSON. What is your view of the consequences for those people that you represent, if we do not take any action in this area whatsoever, and just continue to pile on decision on decision, and case on case, and do nothing in this situation?

Ms. SIMMONS. Mr. Chairman, we are conscious of the fact that our condition has been exacerbated by nonaction. As I quoted the figures with reference to unemployment, and compared them with 1969, you can see the escalation. The NAACP believes that in the next 5 to 6 years unless something is done, black unemployment will increase. Therefore, something has to be done to get a handle on the undocumented worker problem, so that the possibility exists for persons who are in this country and who are unemployed, to get employment.

We do know undocumented workers impact on black unemployment. We know that. The Congress has to come to grips with that, because, as you have mentioned, blacks were brought to this country in slave ships, and we wonder how many hundreds of years it is going to take for us to have equality of opportunity and nondiscrimination in employment, the NAACP is concerned about the fact that you have large numbers of young people who have no hopes of getting jobs, who watch television, who see how the other half lives, and who wonder why they cannot also be effective productive members in society.

I think we are playing with a tinderbox.

Senator SIMPSON. Well, now, in 1985 America we bring Hispanics over in the trunks of cars, instead of slave ships, and we bring them in in tanks, water tanks, 37 illegal, undocumented persons in a water tank that hit a curve in California and tipped over, and they found 37 human beings in there. That cannot be much different than the slave ship, in my mind, and that is what is going on in the United States today, while we dabble along.

I like your ideas. That is why I enjoy you as a spirited lady. When everything else fails, why not take a chance? It is called risk taking, and I guess I must be perverse, but I like to do that, and so thank you very much. I appreciate your testimony. It is always very helpful.

I admire your supportive behavior, and your comments, and your intellectual honesty about the positions you take. I appreciate that.

So, with that, I do want to say that that concludes these 2 days of hearings. We have another hearing on the 24th, and we will then be ready to go to other activities.

I would like to thank very much Dick Day, my chief counsel and staff director, and Charles Wood, Carl Hampe, John Ratigan, Debbie Gibbs and Dee Dee Herzog for their assistance. We very much appreciate all of your thoughtful participation.

Thank you so much.

[Whereupon, at 12:40 p.m., the subcommittee adjourned, subject to the call of the Chair.]

IMMIGRATION REFORM AND CONTROL ACT OF 1985

MONDAY, JUNE 24, 1985

U.S. Senate,
Subcommittee on Immigration and Refugee Policy,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:33 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the subcommittee) presiding.

Also present: Senator Simon.

Staff present: Richard W. Day, chief counsel and staff director; Carl Hampe, Charles Wood, Dee Dee Herzog, and John Ratigan.

OPENING STATEMENT OF ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator Simpson. The subcommittee will come to order. Good morning to all.

Today we begin the third day of hearings on S. 1200, the Immigration Reform and Control Act of 1985. This will conclude a series of hearings on this legislation which we began on June 17, 1985.

I believe, if my colleagues on the subcommittee concur, I think it might be possible to get this bill forward on the agenda of the Judiciary Committee at an early date. We would very much like to see this bill processed on the Senate floor as soon as possible, and that will be at least my intent.

With that, we will begin.

Our first witness this morning is Congressman Bill Richardson, from New Mexico.

I have been very impressed in my personal visits with Congressman Richardson, I think, a most remarkable person. I have worked with him. We have kicked around this sensitive issue, and indeed, it is that, especially to the Hispanics of America. He represents a district which is 40 percent Hispanic, 40 percent native American, 20 percent Anglo. That is as tough a task as anything I can conjure, but he is one person who is well aware of the full spectrum of this issue in a very extraordinarily intimate way, and someone that I have enjoyed working with. I would be very interested to hear your thoughts and your views on this legislation or similar legislation and look forward to that greatly.

Congressman Bill Richardson.

STATEMENT OF HON. BILL RICHARDSON, A U.S. REPRESENTATIVE FROM THE STATE OF NEW MEXICO

Mr. Richardson. Thank you very much, Mr. Chairman. I thank you for this opportunity to appear before you today to discuss S. 1200, the Immigration Reform and Control Act of 1985.

I am chairman of the Congressional Hispanic Caucus in the House, but I am not here representing the entire caucus. There is a wide divergence of views within the Hispanic community as to how to deal with this problem, and my inability at this point to say I am speaking for 13 Members of Congress I think is reflective of that division.

I am here nonetheless, Mr. Chairman, to tell you that it is my priority and our priority as a caucus that we deal with immigration reform legislation now—this year, not next year. I think dealing with immigration reform is a national priority.

I am not here, however, Mr. Chairman, to endorse your bill, for I believe, as I have said before, that it is regressive, somewhat punitive, and in many cases, lacking compassion and fairness—elements which have for so long represented the essence of this country's traditional immigration policy.

Nor, Mr. Chairman, am I only here to criticize and say "Nay say" because I am here to try to bring a positive element to the debate on immigration. The Hispanics will not be obstructionists. We wish to participate in the debate. We wish to be treated as equals in this debate. We wish to have constructive alternatives. Should there not be a Hispanic caucus alternative bill, endorsed by all our members, there will be a Richardson bill, as there have been already individual bills by members of our caucus.

I am here today, Mr. Chairman, to offer what I hope are constructive comments and to pledge my willingness, both as an individual and as chairman of the Hispanic caucus, to work for a bill which is not only effective and fair, but has a real potential for enactment. Toward this end, I have met with the Speaker of the House to encourage his active participation on this issue and to garner his assurance of expeditious action in the House of Representatives.

In the days ahead, I will be meeting with some of the key players in the House, where movement has not taken place, and it is our hope that those meetings will generate some kind of a sense of where we were going. But I will repeat here once again that it is a national priority that we enact immigration reform legislation.

Immigration reform has consumed the better part of two Congresses; hundreds and hundreds of hours of members' and staff time, and before that, years of work by the select commission. It is an issue of great national importance, with international ramifications, and yet it eludes resolution.

The question of the hour is why; why can we not seem to find the right combination of provisions that will ensure resolution of a problem that screams to be solved? The immigration policies of the United States have traditionally been premised on a humanitarian view of our role in the world that inherently we are a compassionate people who with open arms have welcomed many different peoples into this country to begin a new and better life, that we are a fair people, respecting the rights of all. That is not to say that there are not limits to our ability to realistically provide for all who wish to come here, for there are limits—nor, Mr. Chairman, is that to say that illegality should be condoned, for it should not; nor is that to say that we should not have an effective enforcement policy to ensure that our immigration laws are enforced and that the integrity of our borders is maintained, for we should.

But, Mr. Chairman, it is my view that we have, to the detriment of our joint goal of immigration reform, placed too heavy an emphasis on the enforcement side and not a sufficient emphasis on our humanitarian tradition. In other words, our efforts to date have failed to sufficiently balance these important, yet often conflicting, goals.

Mr. Chairman, we need to again struggle to find that balance. I know that sanctions are abhorrant to many, many people, including myself. I, too, am not without fear that they will be misused. While I am willing personally to consider the imposition of sanctions because of this political reality and as a necessary element of a balanced package, I am not willing to do so unless the more humanitarian provisions are equally concluded.

Consistent herewith, I would respectfully suggest that the following provisions be considered for inclusion in any balanced package.

First, there must be an honest recognition that the fears and realities of discrimination are very real and very frightening to many people. You and I, Mr. Chairman, may not in fact sense this anxiety, but many do. And if we are to achieve a balanced bill, we must be cognizant of these fears and provide real statutory protection and not just promises of protection.

Second, there must be established a fair and equitable legalization program which will run concurrently with any initiation of those sanctions. To do less is to deny the acting premise of the select commission itself, that legalization is a realistic response to the problem of illegal aliens. The importance of this synergetic relationship was clearly set forth during last year's consideration of H.R. 1510 by the former Attorney General of the United States, William French Smith, who in his testimony before this committee and the House of Representatives is quoted as saying:

> H.R. 1510 would provide an opportunity to acquire legal status for those illegal aliens who have shown a commitment to becoming permanent members of our society. It is a sensible and humane approach. Although some have criticized legalization as a reward for lawbreakers, it represents a practical decision that is consistent with effective law enforcement. The failure to include such a legalization program would aggravate the condition.

Mr. Chairman, I submit that S. 1200, for all practical purposes, has no legalization program and has, in effect, turned the relationship between legalization and effective enforcement on its head.

Mr. Chairman, again, I think we must question whether S. 1200 would not, in fact, aggravate an already intolerable situation.

Third, Mr. Chairman, I would suggest that when we as a Nation invite individuals into this country or to remain here to perform services for the benefit of this country and its economy, we have a national responsibility to ensure that these people are treated fairly and that while they reside here, they do so in an environment free of exploitation and bondage. To do less, Mr. Chairman, is a national disgrace.

That is not to say that in the interest of a balanced policy, that we should not recognize special circumstances that demand individualized treatment. Perishable commodities in agriculture, which have for so long depended on a workforce consisting of illegal immigrants, may very well deserve that type of individualized consideration.

Finally, I believe the issue of immigration control has been considered for too long as strictly a domestic matter. Likewise, last year's debate over the Simpson-Mazzoli bill focused only on the need for the United States to regain control of its borders by instituting employer sanctions or by increasing border enforcement. What has become evident to me and other members of the Congressional Hispanic Caucus, however, is that immigration control is a multilateral issue between the United States and other nations, particularly those whose lesser-developed economies and/or political turmoil contribute to the flow of immigrants. This view was confirmed by what the members of the caucus saw and heard on their trip to Latin America last December. On our stop in Mexico, we found that Mexican officials demonstrated a willingness to discuss important bilateral issues, including the problem of undocumented migration.

Mr. Chairman, I would respectfully suggest that we as a Nation should, in our present consideration of immigration reform, be fostering both public and private United States and Mexican, as well as other multilateral initiatives, as an important first step toward solving the worldwide illegal immigration problem, of which we are only a part. Such initiatives could include: (1) a free trade and coproduction zone along the United States-Mexican border; (2) a United States-Mexican bilateral commission; (3) a joint United States-Mexico development bank; and (4) a multilateral commission on immigration.

To look only to the domestic side of the immigration problem is to miss half the solution. We must expand our view and look for a total solution, for if we do not, we are bound to repeat the failures of the past.

Mr. Chairman, there are clearly other components of S. 1200 that need consideration and careful review. I believe, however, that the potential stumbling block to passage of an Immigration Reform and Control Act at any time in the near future will arise from our failure to deal with the elements that I have outlined above in an honest, sensitive and humanitarian way.

We must have the capacity as legislators to step into the shoes of those who fear persecutions from their countries of origin, of those who want nothing more than to feed and educate their families and seek a better future, of those who have felt the anxiety and frustration of discrimination, of those who live in constant fear of exposure and thereby become the exploited, and thus to know the depth of their concern.

By the same token, we must be legislators who recognize disruptions to major industries and the economic consequences of our action and inaction; to recognize the limitations of our Nation, to provide for all people, and to legitimately recognize the integrity of our borders and the right to control them by effective law enforcement. To skew the scale disproportionately in either direction will only ensure our failure once again. I sincerely hope that this failure is averted, and I stand ready to work with you and members of this committee for immediate passage of a fair and equitable immigration reform bill.

Once again, Mr. Chairman, I thank you and other members of your committee for your kind attention to my comments, and once again, I wish to stress the positive nature of my testimony, that is, that we need immigration reform legislation now, this year, this calendar year, that we need to deal with it fairly, honestly and expeditiously, and I stand ready to work with you and members of this committee to do so in the days ahead.

Thank you.

Senator SIMPSON. Congressman Richardson, I deeply appreciate that. It is very good to hear your remarks this morning. I want to tell you how very pleased and gratified I am to have you in this thing. I certainly will not say, "Come on in, the water's fine"—because it is hotter than hell, actually—but that is just another reason why I am so deeply appreciative of you, and admiring deeply your willingness to step into this issue in a positive way. And I hear your honest criticisms, and we are not in the markup procedure. There are things I am thinking of addressing that might relieve some of your anxiousness on a couple of those items.

There has never been any shortage of persons or groups who oppose this or that part of this legislation. It is always a dazzling thing that they go through—"Well, I certainly like what you are doing there, but . . .," and then there are 52 different segments of the "buts," and that is what they are sometimes.

So, it is good to hear you come forward with that positive counterproposal and to believe that we would see in the House, perhaps, at least three bills to process—maybe there will be more. I think that is excellent. And I certainly look forward to working with you in the future. It has been a pleasure to work with you in the past, and you visiting with me, me visiting with you, on matters of deep concern, and I am very appreciative. I look forward to a continuing exchange with you, with other members of the congressional Hisoanic caucus. I will try to remain sensitive to that, because we really do not have that representation in the Senate, and you bring a special sensitivity to it all, and I trust we can maintain an open and responsive spirit of inquiry and exchange, and you may be sure that I really do want to work with you in any way I can. I thank you very much again for sharing your thoughts with us today.

I recognize the presence of my friend from Illinois, Paul Simon, Senator Simon, who is quickly proving what he told me he would prove when he came here. He said, "I want to work with you and see if we can do something in immigration reform," and he is participating and sharing a great deal of himself.

Senator Simon.

OPENING STATEMENT OF PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. I thank you, Mr. Chairman, and I can say with great pride I served in the House with Bill Richardson.

First of all, your point that we cooperatively do some things with Mexico to lift the economy of that country, I just think is absolutely on target. And somehow, while it is not the jurisdiction of this committee, we ought to have a parallel bill that moves along that moves on that problem, because if we do not do that, we are just fooling ourselves that we are going to significantly do something in this area.

Three areas you touched on, and let me just ask you to be a little more specific. The area of discrimination—what should we be doing?

Mr. RICHARDSON. Senator, I think discrimination protection is critical if there is going to be any element of sanctions in this bill, and I think the strong votes in both the House and Senate, indicating the strength of sanctions indicates that we must have strong discrimination protection provisions. I believe that my personal preference is those that were initiated by Congressman Hawkins in the House. Congressman Frank and others in the House have made some sincere efforts, but they basically involve discrimination protection with teeth. And we are currently grappling with that issue, and it is a subject of contention, but once again, I think the elements of this Nation indicate that discrimination protection is critical. There is a great fear among Hispanic people that sanctions are going to discriminate, and I think there is great potential for that. I believe there is that possibility, that we will create serious tension. If that is going to happen, if that is the will of the Congress that sanctions are going to be the part of any kind of bill, then I believe we must ensure that that necessary protection be there.

Senator SIMON. I do not want to put words in your mouth, but would it be safe to say that we ought to have penalties at least as great for discrimination for employers as penalties for employing those who are undocumented aliens?

Mr. RICHARDSON. Unquestionably.

Senator SIMON. Second, in the area of legalization—from your perspective, the bill introduced by my colleague 2 years ago, was it more in the direction that you would like to see in the legalization area?

Mr. RICHARDSON. Well, it was part of a package which I think was concurrent. You had the element of sanctions, then you had the element of legalization; concurrent enactment of both. That was a much more favorable approach, I think, than what has been proposed in this bill, where in essence, you have a trigger; you have a sanctions provision, and then after certain conditions are met and the Commission makes certain determination, then there might be legalization.

I think that is, once again, not—I think that is regressive from last year, and in some cases, it is unfair. But once again, in my effort to be positive before this Committee—and I know Senator Simpson is a very fair man—I do not want to dampen the lustre of the possibility of being able to work on this. But I think it is essential that a generous and compassionate and fair legalization program be part of any kind of immigration reform legislation. And the tragedy of failing to enact any immigration reform legislation is that there are millions of people that are out there, that are helpless, that are living in the shadows, that are contributing to this country, but they have no status, and they are being exploited. That is one of the tragedies of the defeat of the legislation last year, in my judgment.

Senator SIMON. Then, finally, the area of agricultural workers. What do we do—recognizing both the needs and the very real need to protect agricultural workers in this country.

Mr. RICHARDSON. Well, I think first of all, Senator, the provision that was passed last year, initiated by my good friend, whom I have been working with and incessantly trying to deal with this problem, Congressman Panetta, I think was an inadequate provision that lacked compassion and fairness and would not have worked, either.

I think what we need to do is look at this provision as a special status. There are those in the agriculture community that feel that this should be treated separately of any kind of immigration reform legislation. I think we should consider that. But let's face it, it is part of immigration reform legislation, and perhaps if we deal with everything as a package, we might be better off.

This is something that I think is going to—the ingredients of any kind of legislation in this area, once again, let us ensure that no one is exploited, that worker conditions are protected, that it be a fair and equitable provision, that the views of those in the Hispanic community, the farmworkers, be taken very much into account, because they are the ones that in many cases suffer this exploitation. But there are also interests in this country that I think deserve, in the perishable commodities field, some kind of a response.

So what I am saying, Senator, is that this is a subject of intensive discussions and negotiations. My preference is that we try to have some kind of sensible balance between all of these issues that we have discussed today, and that is sanctions; the major component that I want to introduce in this debate; the relationship with Mexico; the legalization program, and the agricultural issue. I would think it would be in our interest to treat it all in one package, but there are those that would like to separate that, and I think those views should be considered.

Senator SIMON. I want to thank you for your testimony. It appears likely that we are going to be marking up in the Senate before you do in the House, and I am eager for any input you may have. I am new, and green, as far as having much knowledge in this area. I am trying to learn. My instructor is very patient with me, over here. But I commend you for your contribution, and I also think that if we can work out something that is—it is not going to satisfy everyone—but that can move in a constructive direction, that is in everyone's interest, and I applaud what you are doing. I thank you very much.

Thank you, Mr. Chairman.

Mr. RICHARDSON. And I thank you, Senator. You do recall you are an honorary member of the Congressional Hispanic Caucus, although I must remind you that you have not paid your dues this year as a member of the Senate [Laughter.]

Senator **Simpson**. I do see you probing and becoming very adept at this issue, Senator Simon. It is important, and one of the vexing problems is this relationship with Mexico that Congressman Richardson speaks about. We must have a bilateral movement here of activity, and I support aid and assistance and economic development, and yet in my time in grappling with this thing, almost every study, I think without exception, discloses that initial development initiatives in newly industrialized countries, developed countries like Mexico, and lesser developed countries, Third World countries, that initial initiatives lead to increased outmigration in the short run, that being 10 to 20 years, because without strong and significant enforcement provisions on the domestic front, we are just going to be very unlikely to alleviate this extraordinary 10 to 1-wage differential, which is the thing that is the tremendous pull, the magnet factor. The fact that we need to provide 600 million jobs in the next 20 years in the world, and that is more than there are in the industrialized world today, is a very troublesome thing in its totality.

I thank you very much, Bill Richardson, for coming here and being willing to do this. I am deeply appreciative.

Thank you.

Our next witness is the honorable D. Lowell Jensen, the Deputy Attorney General of the United States, who is here on behalf of our Attorney General. And I think we all note a special note of sympathy to Attorney General Ed Meese, who lost his father the last part of last week, and our sympathy and affection go out to him on that loss.

It is nice to have you with us, sir.

STATEMENT OF HON. D. LOWELL JENSEN, DEPUTY ATTORNEY GENERAL OF THE UNITED STATES, U. S. DEPARTMENT OF JUSTICE

Mr. **Jensen**. Thank you very much, Mr. Chairman, and Senator Simon.

As you pointed out, Mr. Chairman, it is unfortunate the Attorney General cannot be here today. He had planned to be here to personally express his support for this effort in terms of immigration reform. I wanted to make it clear that he wished to be here, but could not be, as you pointed out.

I welcome, on behalf of the Department and the administration, this opportunity to appear before your subcommittee to comment on the immigration reform legislation which you have so ably promoted over the past 4 years.

I begin my testimony by emphasizing that the President and the Department of Justice have been strongly committed to comprehensive immigration reform over the years.

It may be useful to underscore that commitment by reviewing the history of the administration's participation in the immigration reform effort. As you know, during the prior administration, the Select Commission on Immigration and Refugee Policy was established to conduct a comprehensive study on the current state of immigration law and to make recommendation on those changes, which appeared to command the necessary support for enactment. This blue-ribbon commission, on which you so ably served, conducted a 2-year study, including 12 regional hearings, and in March 1981 issued its report. The essential recommendations were: enactment of employer sanctions, a legalization program, and enhanced enforcement at the borders.

Upon receipt of the Select Commission's report, the administration immediately set up its own Cabinet-level task force to review the recommendations and make appropriate legislative proposals. In October 1981, the administration's bill was submitted to Congress, containing as its core elements employer sanctions and a legalization program. Extensive hearings were conducted under the auspices of this subcommittee, and that of Congressman Mazzoli on the administration's proposal, and later on successor legislation, the popularly referred to Simpson-Mazzoli bill.

The extensive and thorough record of congressional consideration of this consensus vehicle for immigration reform is also worth reviewing. In August 1982, the Senate passed the Simpson-Mazzoli legislation by the overwhelming bipartisan margin of 80 to 19. The House succeeded in bringing the legislation to the floor in the post-election lameduck session, but was unable to reach a final vote.

In the 98th Congress, the legislation was reintroduced in the House and Senate, and the case for enactment was restated through comprehensive hearings. In May 1983, Senate passage was again achieved overwhelmingly by a vote of 76 to 18. The House also passed its version of the legislation, albeit by a less comfortable margin of 216 to 211 in June 1984. Unfortunately, the House-Senate conference established to reconcile the differences between those bills was unable to reach final agreement despite the outstanding effort, Mr. Chairman, of yourself and of this subcommittee.

Therefore, it cannot be argued that this is an issue which has received inadequate consideration by the administration or the Congress and that all points of view have not been heard. The administration continues to support passage of fair and balanced reform, and President Reagan has stated his commitment to that goal on numerous occasions during the past 4½ years. The problems the legislation seeks to address have not diminished and the status quo continues to be unacceptable.

In fiscal year 1983, for the first time in history, the Immigration and Naturalization Service apprehended more than 1 million illegal aliens, primarily along our southern borders. That recordbreaking figure was exceeded in the most recent fiscal year and can be compared to annual apprehensions of 80,000 in the midsixties.

As Attorney General William French Smith put it succinctly: "We must regain control of our borders." Indeed, regaining control of our borders is an essential goal of any true immigration reform. As a sovereign nation, we must be able to decide who may cross our borders. Certainly, entry into the United States cannot be equitable if those willing to sneak in under cover of night can enter with impunity, while others following the procedure of our laws are rewarded only with years of delay.

Accordingly, deterrents to illegal immigration must be part of any legislative package. Already, with the able assistance of this committee, the President sought and obtained for fiscal year 1985 substantial increases in immigration enforcement resources at the border. We will support the additional resources to implement this bill and to have effective interior and border enforcement. We believe that increased immigration enforcement resources and legislative tools are cost beneficial, will save substantial dollars in the long run, and will preclude illegal aliens taking jobs from U.S. citizens and lawful residents.

Yet regaining control of our borders is not the only principle that must govern responsible immigration policy. The immigrant has always been one of the greatest American resources. We must not deprive ourselves of the real bounty of immigration.

Today, neither the established immigrant who has made his home here nor the aspiring foreigner seeking to enter our land are well served by the chaos of our borders. Vast as our country may be, and as dynamic as our free economy undoubtedly is, the United States simply cannot throw open its doors to the world. When Fidel Castro opened his jails and asylums in the Mariel incident, we were burdened with many individuals who were not seeking to live at liberty under our laws. We do not help immigrants already in the country struggling to establish themselves by taxing away their hard-won earnings to provide public support for new immigrants who do not have the same desire to succeed by their own efforts. We do not assist new immigrants by admitting them to our country only to find that there are no jobs for them, and that they must rely on public assistance.

At the same time, we must recognize the fact that some people, having entered this country illegally, have set down roots here and become productive members of American society. We have to deal realistically with people whose longstanding presence here have demonstrated an abiding commitment to this country as productive and law-abiding residents.

In short, Mr. Chairman, we can regain control of our borders only by a reasoned policy, executed by effective control of our borders, that makes equitable decisions concerning who should be admitted to the privilege of permanent American residence and eventual American citizenship.

For all these reasons, the administration welcomes the introduction of S. 1200 and looks forward to the early achievement of our mutual goal of the comprehensive reform of this Nation's immigration laws.

I will turn to some of the specific portions of the proposed legislation.

With reference to employer sanctions, with regard to the legislation itself, I would like to now discuss that particular provision. Much illegal immigration is caused by the easy entry of illegal immigrants into jobs that are very attractive when compared to employment opportunities in their homelands. Through a provision establishing penalties for knowingly hiring aliens who lack authorization to work in the United States, this problem can be addressed effectively. Employer sanctions are a credible and effective tool in dealing with such illegal immigration. As long as the American job market remains open to them, illegal aliens will continue to risk illegal entry, smuggling, fraudulent visas, and the possibility of apprehension and deportation. We continue to support effective methods to require employers to share the responsibility to help solve this problem.

The administration has previously supported and will continue to support the legalization of some present, undocumented or illegal aliens as part of comprehensive immigration reform. When the administration originally proposed a legalization program in 1981, it was designed to be fair to U.S. citizens, legal residents, and would-be immigrants who have waited patiently to come here legally. Also, we did not want to attract additional illegal aliens to this country.

These are still our primary goals for a legalization program. The provisions of S. 1200, which would postpone the effective date of legalization until the effectiveness of enforcement measures has been demonstrated, address some of the concerns that have been raised about legalization, and will be the subject of careful discussion and study within the administration and with the Congress.

At present, State and local governments bear the cost of providing assistance for many aliens residing in the United States illegally. The administration supports in principle a capped block grant to assist State and local governments with transitional social welfare expenditures associated with the legalization of such aliens. In this regard, we would have to oppose reimbursement to State and local governments of costs associated with imprisonment by State and local governments of illegal aliens. We believe this should remain a State and local responsibility, in keeping with their jurisdiction over enforcement of their own laws.

It is acknowledged that the labor needs of certain sectors of our economy have been filled over the past years by a sizable number of illegal aliens who did not enter under temporary worker provisions. As we prohibit the employment of illegal aliens, it is important that we also provide a legal mechanism for employers to hire temporary foreign workers when they are unable to find American workers. The administration supports statutory authorization of a distinct H-2 temporary agriculture worker program. This program may be particularly important for agriculture during the transition period from dependence on illegal alien labor to reliance on a legal work force.

The Departments of Justice, Labor, and Agriculture have reviewed the H-2 program and proposed statutory modifications. We seek a balanced program that would ensure an adequate source of foreign labor, but would not exploit employees or provide an added incentive to hire foreign rather than resident workers. The program should also provide safeguards to ensure that American workers are not adversely affected by foreign labor and it should protect the rights and welfare of all workers.

Members of this subcommittee have sought diligently to work with your House colleagues to craft suitable language to describe such a program for temporary foreign agricultural workers. The provisions of S. 1200 reflect a compromise worked out by last year's Senate-House Conference Committee. The administration recognizes there will be continued discussions of the specifics in this sensitive area, and we look forward to working with the subcommittee on this matter. We also urge that an extra effort be made by representatives of growers and labor in conjunction with the administration and the Congress to develop an acceptable and workable solution to the agricultural temporary worker issue. This can be accomplished if all parties proceed in good faith and recognize the broader national need for reform.

We appreciate the cooperation and responsiveness of this subcommittee to the suggestions the administration has made in previous years concerning the workability of certain provisions of the reform legislation. This subcommittee and your counterpart in the House of Representatives is to be commended for your thorough review of the immigration reform issues over the past 4 years.

INS Commissioner Alan Nelson will comment on specific aspects of the bill following this testimony. Other agencies will be providing additional views. The administration remains strongly convinced that the national interest will be served by prompt enactment of immigration reform legislation. In the bipartisan tradition that must guide the consideration of this subject, we pledge our support in achieving that goal. We must provide the legislative authority to administer effectively our immigration laws and restore respect for the integrity of our immigration system.

Thank you, Mr. Chairman. As I said, I would be happy to respond to some questions. Commissioner Nelson is here and will provide testimony and would be available, perhaps, for more specific questions that the chair may have and the subcommittee may have.

Senator SIMPSON. Thank you very much, Mr. Jensen. That is very helpful, I think a very strong statement on behalf of the administration, and I do appreciate that. I have always been interested in criticism in the past that has come down that the administration has not been strongly committed to immigration reform, and that somehow, the vacillation, if identified—I do not recall it—by the administration last year, caused the Conference Committee failure to approve an immigration bill. That has always been an odd situation to observe, because this President has always been deeply committed, the Vice President has been committed, the Attorney General then and now, William French Smith and Ed Meese, have been committed to it. I think we are looking for a degree of purity that may not come with regard to that, and that again becomes another reason if a guy wants to jump ship, he just says, "Well, I don't know if the administration is aboard enough." There is just no limit to the novelty of the things that come to a person in this area.

But I understand that you are saying that this administration's position on the immigration reform measure being considered today is very clear and very real and very strong. Is that what you are saying?

Mr. JENSEN. That is correct, Mr. Chairman. Ever since 1981, as I have gone over in the testimony, it has been very clear that the administration does support—that the President has made on numerous occasions specific statements of support. As you pointed out, William French Smith as Attorney General did so, and Ed Meese as Attorney General does so, and that is part of my purpose in being here today. I believe there was some hesitancy as a result of the conference last year, but the idea that there was any lack of support by the administration is certainly unfounded as a result of that experience.

So I want to make it very clear that we do support, and my statement is in support of fair, balanced, and workable immigration reform. I want to make that very clear for the record.

Senator SIMPSON. I do hear that very clearly. And I do also recall well in the Conference Committee activities that the newly-created issue of discrimination based on alienage was one that caused great confusion—and not just with the administration, but with me—to set up a separate agency of the Federal Government to pursue that issue, which was certainly unacceptable to this sponsor.

Let me ask you, do you feel that this present bill and current civil rights laws that are on the books guard adequately against the possibility of employment discrimination caused by employer sanctions?

Mr. JENSEN. I believe that it does, Mr. Chairman. As you say, there is not only this bill, but existing anti-discriminatory legislation and enforcement mechanisms. This bill provides a fair and uniform mechanism for employers to live by. It provides a balanced approach in this regard. It also provides a monitoring mechanism because this is a very sensitive area. And I believe that sensitivity is reflected in this bill and that we can look to any experience under the bill that we could respond to, so that that area is attended to. It is one that I believe, on the bill's present structure and the present state of the law, that we could say that there is a fair and balanced approach; but we should always be sensitive to and would be attentive to that issue in the future.

Senator SIMPSON. Let me ask you, because you have a distinguished record in and out of Government, do you believe that the employer sanctions in this legislation are sufficiently strong and that they are enforceable out there in the real world?

Mr. JENSEN. I believe that they are, and I would also make another comment. I think the real world includes the fact that we would anticipate voluntary compliance with this legal structure. There is nothing to indicate that we would not have voluntary compliance.

To the extent that it may occur, the real world does have an enforceable mechanism here. It provides a mechanism for employers to respond in a relatively direct, uniform and simple way. I think we would have voluntary compliance, and to the extent that there may be some area where there is not, I think there is an enforceable mechanism here.

Senator SIMPSON. A final question. There has been discussion about the certification required of a legalization commission as we get to the triggered legalization. That commission is going to consist of people appointed by the Speaker of the House and the President of the Senate—people who are committed to legalization. And maybe we might clarify that to be sure that those people who serve on that commission are, by the public record, committed totally to legalization.

But are you confident that with an employer sanctions program and increased INS enforcement, which is of course very much part of this bill, that we would be able to achieve what we are seeking in the way of "substantial reduction" in illegal immigration?

Mr. **Jensen**. I believe that has been the sense of the commissions that have looked at it and the sense of the administration's position over these last several years, as I have pointed out.

I believe that the employer sanctions portion of this with the compliance that could be anticipated would effectively get at a balance and curb the problem of employment in that regard; and I believe that the enforcement increase—we have already had a history where that has been effective. So, with both those in place, and with a recognition that in other areas of the world where employer sanctions have been imposed, they have been effective, I believe that with those portions, as I say, of a balanced bill, that we would arrive at that situation where certification would be possible.

Senator **Simpson**. What you say is borne out in our review of things that employer sanctions have been effective where they are not simply just the cost of doing business, and these are pretty tough penalties here—first offense, not less than $100 nor more than $2,000; second offense, $2,000 to $5,000; then, $3,000 to $10,000—that is per illegal alien. I think that is important to note, and I think it is critical that we have not found anywhere where employer sanctions have proven to be discriminatory as yet. I understand the fear; I do understand that. That is very clear, and I listen. But it has not yet happened in other countries where there is enforceable employer sanctions. That will be one of the areas, certainly, that we will be grappling with.

Well, I do appreciate this very much. I appreciate your testifying, and I thank you very much for being here.

Mr. **Jensen**. Thank you, Mr. Chairman.

[The prepared statement follows:]

PREPARED STATEMENT OF EDWIN MEESE III

Chairman Simpson and Members of the Subcommittee,

I welcome this, my first opportunity to appear before your subcommittee to comment on the immigration reform legislation which you have so ably promoted over the past four years.

I begin my testimony by emphasizing that both President Reagan and I have been strongly committed to comprehensive immigration reform.

It may be useful to underscore that commitment by reviewing the history of the Administration's participation in the immigration reform effort. As you know, during the prior Administration, the Select Commission on Immigration and Refugee Policy was established to conduct a comprehensive study on the current state of immigration law and to make recommendations on those changes which appeared to command the necessary support for enactment. This blue ribbon commission, on which you so ably served, conducted a two-year study, including twelve regional hearings, and, in March 1981, issued its report. The essential recommendations were enactment of employer sanctions, a legalization program, and enhanced enforcement at the borders.

Upon receipt of the Select Commission's report, the Administration immediately set up its own Cabinet-level task force to review the recommendations and make appropriate legislative proposals. In October, 1981 the Administration's bill was submitted to Congress containing as its core elements employer sanctions and a legalization program. Extensive hearings were conducted under the auspices of this Subcommittee and that of Congressman Mazzoli on the Administration's proposal and later on successor legislation, the popularly referred-to Simpson/Mazzoli bill.

The extensive and thorough record of Congressional consideration of this consensus vehicle for immigration reform is also worth reviewing. In August, 1982 the Senate passed the Simpson/Mazzoli legislation by the overwhelming, bi-partisan margin of 80-19. The House succeeded in bringing the legislation to the floor in the post election "lame duck" session but was unable to reach a final vote. In the 98th Congress the legislation was re-introduced in the House and Senate and the case for enactment was restated through comprehensive hearings. In May, 1983 Senate passage was again achieved overwhelmingly, 76-18. The House also passed its version of the legislation, albeit by a less comfortable margin of 216-211, in June of 1984. Unfortunately, the House-Senate conference established to reconcile the differences between those bills was unable to reach final agreement, despite the outstanding efforts of you, Mr. Chairman, and this Subcommittee.

Therefore, it cannot be argued that this is an issue which has received inadequate consideration by the Administration or the Congress or that all points of view have not been heard. The Administration continues to support passage of fair and balanced reform, and President Reagan has stated his commitment to that goal on numerous occasions during the past four and one-half years.

The problems the legislation seeks to address have not diminished and the status quo continues to be unacceptable. In fiscal year 1983, for the first time in history, the Immigration and Naturalization Service (INS) apprehended more than one million illegal aliens, primarily along our southern border. That record breaking figure was exceeded in the most recent fiscal year and can be compared to annual apprehensions of 80,000 in the mid-sixties.

As my predecessor, William French Smith, put it succinctly, we must regain control of our borders. Indeed, regaining control of our borders is an essential goal of any true immigration reform. As a sovereign nation we must be able to decide who may cross our borders. Certainly entry into the United States cannot be equitable if those willing to sneak in under cover of night can enter with impunity, while others, following the procedure of our laws, are rewarded only with years of delay.

Accordingly, deterrents to illegal immigration must be part of any legislative package. Already with the able assistance of this committee the President sought and obtained for FY 1985 substantial increases in immigration enforcement resources at the border. We will support the additional resources to implement this bill and to have effective interior and border enforcement. We believe that increased immigration enforcement resources and legislative tools are cost beneficial, will save substantial dollars in the long run, and will preclude illegal aliens taking jobs from U.S. citizens and lawful residents.

Yet regaining control of our borders is not the only principle that must govern responsible immigration policy. The immigrant has always been one of the greatest American resources. We must not deprive ourselves of the real bounty of immigration.

Today, neither the established immigrant who has made his home here nor the aspiring foreigner, seeking to enter our land, are well-served by the chaos of our borders. Vast as our country may be, and dynamic as our free economy undoubtedly is, the United States simply cannot throw open its doors to the world. When Fidel Castro opened his jails and asylums in the Mariel incident, we were burdened with many individuals who were not seeking to live in liberty under our laws. We do not help immigrants already in the country, struggling to establish themselves, by taxing away their hard won earnings to provide public support for new immigrants who do not have the same desire to succeed by their own efforts. We do not assist new immigrants by admitting them to our country, only to find that there are no jobs for them and that they must rely on public assistance.

At the same time, we must recognize the fact that some people, having entered this country illegally, have set down roots here and become productive members of American society. We have to deal realistically with people whose longstanding presence here has demonstrated an abiding commitment to this country as productive and law-abiding residents.

In short, Mr. Chairman, we can regain control of our borders only by a reasoned policy, executed by effective control of our borders, that makes equitable decisions concerning who should be admitted to the privilege of permanent American residence and eventual American citizenship. For all these reasons the Administration welcomes the introduction of S. 1200 and looks forward to the early achievement of our mutual goal of the comprehensive reform of this Nation's immigration laws.

Employer Sanctions

With regard to the legislation itself, I would like to now discuss some of the specific provisions that are included in S. 1200. Much illegal immigration is caused by the easy entry of illegal immigrants into jobs that are very attractive when compared to employment opportunities in their homelands. Through a provision establishing penalties for knowingly hiring aliens who lack authorization to work in the United States, this problem can be addressed effectively. Employer sanctions are a credible and effective tool in dealing with such illegal immigration. As long as the American job market remains open to them, illegal aliens will continue to risk illegal entry, smuggling, fraudulent visas, and the possibility of apprehension and deportation. We continue to support effective methods to require employers to share the responsibility to help solve this problem.

Legalization

The Administration has previously supported and will continue to support the legalization of some present undocumented or illegal aliens as part of comprehensive immigration reform. When the Administration originally proposed a legalization program in 1981, it was designed to be fair to U.S. citizens, legal residents and would-be immigrants who have waited patiently to come here legally. Also, we did not want to attract additional illegal aliens to this country. These are still our primary goals for a legalization program.

The provisions of S. 1200, which would postpone the effective date of legalization until the effectiveness of enforcement measures has been demonstrated, address some of the concerns that have been raised about legalization and will be the subject of careful discussion and study within the Administration and with the Congress.

At present, state and local governments bear the costs of providing assistance for many aliens residing in the U.S illegally. The Administration supports in principle a capped block grant to assist state and local governments with transitional social welfare expenditures associated with the legalization of such aliens. In this regard, we would have to oppose reimbursement to state and local governments of costs associated with imprisonment by state and local governments of illegal aliens. We believe this should remain a state and local responsibility in keeping with their jurisdiction over and enforcement of their own laws.

It is acknowledged that the labor needs of certain sectors of our economy have been filled over the past years by a sizable number of illegal aliens, who did not enter under temporary worker provisions. As we prohibit the employment of illegal aliens, it is important that we also provide a legal mechanism for employers to hire temporary foreign workers when they are unable to find American workers.

The Administration supports statutory authorization of a distinct H-2 temporary agricultural worker program. This program may be particularly important for agriculture during the transition period from dependence on illegal alien labor to reliance on a legal work force. The Departments of Justice, Labor, and Agriculture have reviewed the H-2 program and proposed statutory modifications. We seek a balanced program that would ensure an adequate source of foreign labor, but would not exploit employees or provide an added incentive to hire foreign rather than resident workers. The program should also provide safeguards to ensure that American workers are not adversely affected by foreign labor. And it should protect the rights and welfare of all workers.

Members of this Subcommittee have sought diligently to work with your House colleagues to craft suitable language to describe such a program for temporary foreign agricultural workers. The provisions of S. 1200 reflect the compromise worked out by last year's Senate-House conference committee. The Administration recognizes that there will be continued discussions of the specifics in this sensitive area and we look forward to working with the subcommittee on this matter.

We also urge that an extra effort be made by representatives of growers and labor, in conjunction with the Administration and the Congress, to develop an acceptable and workable solution to the agricultural temporary worker issue. This can be accomplished if all parties proceed in good faith and recognize the broader national need for reform.

Conclusion

We appreciate the cooperation and responsiveness of this Subcommittee to the suggestions the Administration has made in previous years concerning the workability of certain provisions of the reform legislation. I commend this Subcommittee and your counterpart in the House of Representatives for your thorough review of the immigration reform issues over the past four years. INS Commissioner Alan Nelson will comment on specific aspects of the bill. Other agencies will be providing additional views.

The Administration remains strongly convinced that the national interest will be served by prompt enactment of immigration reform legislation. In the bipartisan tradition that must guide the consideration of this subject, we pledge our support in achieving that goal. We must provide the legislative authority to administer effectively our immigration laws and restore respect for the integrity of our immigration system.

Senator SIMPSON. Our next witness is Thomas R. Donahue, the distinguished labor representative, Secretary-Treasurer of the AFL-CIO and a long-time observer of this scene of immigration reform and employer sanctions, I know.

It is nice to have you here, sir.

STATEMENT OF THOMAS R. DONAHUE, SECRETARY TREASURER, AFL-CIO, ACCOMPANIED BY JANE O'GRADY, LEGISLATIVE REPRESENTATIVE, AND JANET KOHN, ASSOCIATE GENERAL COUNSEL

Mr. DONAHUE. Thank you very much, Senator.

Senator, we have and will submit for the record a full statement of our position on the legislation, but I would like to highlight some of the points of that testimony in an oral presentation to you.

You well know that we think immigration reform is a matter of great importance to the American labor movement and a topic on which we have spent a good deal of thought and concern over all of these years.

We are grateful, Mr. Chairman, for your perseverance over the years in pushing for fair and workable solutions to illegal immigration. You have been willing to continue that effort in the face of what has to be a discouraging combination of lethargy in some quarters and opposition in others.

We share your view that legislation is necessary, that it is possible, and we stand with you in regretting that a solution was not found in the last Congress.

Senator, we favor immigration reform that does four things: prohibits the employment of undocumented workers and enforces that prohibition with substantial and workable sanctions against the employers who would violate it; that deters employment discrimination against documented workers on the basis of national origin or legal resident alien status, again backed by substantial and workable sanctions. We favor legislation which will offer the most generous, practical, legalization program for those aliens who, though ther presence here is not authorized, have, in fact, become settled, contributing members of their communities. And finally, we favor reform which would strictly limit employer use of temporary foreign workers to do work in this country.

The bill which you recently introduced, Mr. Chairman, S. 1200, apparently meets only one of our four criteria, and, unfortunately, falls short in three other respects by which we must judge immigration reform legislation.

S. 1200 contains what we regard as a sensible set of employer sanctions. This portion of the bill provides a fair basis for working out an effective, balanced system of sanctions against people who hire undocumented workers.

We think, however, that the bill takes an unhelpful approach to two other essential matters; namely, protection against discrimination and a legalization program for those people who have established roots in this country. It is not, in our view, appropriate to delay legislative action to counter the possibility that some employers will engage in employment discrimination against persons who are legally entitled to work in this country as a byproduct of sanctions against the hiring of undocumented aliens.

In our view, the legislation that establishes sanctions must also prohibit discrimination, and it must set up an effective enforcement mechanism. All that S. 1200 does is to establish that system of annual reports, and even if a pattern of discrimination is found, the task force can only recommend to Congress such legislation as may be appropriate.

Similarly, the bill's provisions with respect to legalization offer neither a present reality of legalization nor even the real promise of an actual legalization program at a fixed date. Under the bill, it is uncertain whether there would ever be a legalization program. What is certain is that several million workers in this country could be locked permanently into involuntary servitude. All of the working undocumented aliens who came here after January 1, 1980, would be barred from legally obtaining new employment, but their continued employment would not be illegal. So employers would be given virtually unchecked power over the terms and conditions of those workers' employment.

On the issue of temporary foreign workers, Mr. Chairman, the AFL-CIO believes that S. 1200 does just the opposite of what a reform bill ought to do—it turns over the production and harvesting of American crops to imported short-term guest workers. While I do not believe that is your intention, Mr. Chairman, as we read the bill, it will create a new "bracero" program that would enable the big growers to acquire a captive force of defenseless workers. Those workers would lack even the minimal protections of the old "bracero" program, which experience showed were themselves inadequate to prevent exploitation. That, we submit, exacts too high a moral price from this country to be allowed.

In conclusion, Mr. Chairman, we adhere to our position that immigration legislation is necessary. We stand ready to work with you and your subcommittee on the development of such legislation. But we feel that such legislation must achieve the four objectives that we outlined.

Thank you.

[Statement follows:]

PREPARED STATEMENT OF THOMAS R. DONAHUE

Mr. Chairman and members of the subcommittee, the AFL-CIO is pleased to appear before you today to discuss immigration reform. As you of course know, Mr. Chairman, this is a subject of great importance to us and one on which we, like you, have spent much thought and concern.

The AFL-CIO favors immigration reform that (1) enacts a prohibition against the employment of undocumented workers backed by substantial and workable sanctions; that 2) deters employment discrimination against documented workers on the basis of their national origin or legal resident alien status, again by a federal prohibition backed by substantial and workable sanctions; that (3) offers the most generous practical legalization program for those aliens who, though their presence here is not authorized, have become settled, contributing members of their communities; and that (4) strictly limits the employer use of temporary foreign workers to do work in this country.

In previous attempts to pass legislation, there was a major movement toward a resolution that could have achieved a widely acceptable bill. The AFL-CIO, many employers and others were in agreement in broad areas. The Labor-Management Group, which represents major economic interests, including the Chairmen of major corporations and the Presidents of major labor unions as well as the President and Secretary-Treasurer of the AFL-CIO, during the last Congress stated the group's concurrence on the urgent need for legislation that "provides a system of identification and employment record verification that protects legal workers and U.S. employers while prohibiting the employment of undocumented workers" and that "penalizes employers who violate these provisions." It appeared possible to work out a solution to problems created by the employment of undocumented workers and millions of undocumented workers could have had their situation normalized under legislation that would deter future illegal immigration, provide security to those already here, and stabilize the work force.

It appeared in the last Congress that it would also be possible to work out legislative solutions to the problems concerning legalization and discrimination. We still believe those solutions can be achieved, so that legislation can be passed that would establish tough and enforceable sanctions against employers who hire the undocumented as well as against employers who discriminate against individuals who are legally entitled to work, and that would establish a generous legalization program to allow and encourage participation to the maximum extent feasible by those persons who, since their original unlawful entry, have settled and developed roots in this country.

Mr. Chairman, we are grateful for your perseverance over the years in pushing for fair and workable solutions to these problems. You have been willing to continue the effort in the face of a discouraging combination of lethargy in some quarters and opposition from others. The AFL-CIO stands with you in the view that legislation is necessary and that it is possible.

The bill that you recently introduced, Mr. Chairman, S. 1200, apparently meets only one of these four criteria by which the AFL-CIO measures immigration reform legislation. Unfortunately, we believe it falls short in the three other respects by which we measure immigration reform.

S. 1200 contains a sensible set of employer sanctions. This portion of the bill, in our view, provides a fair basis for working out an effective, balanced system of sanctions against those who hire undocumented workers.

However, S. 1200 takes an unusual and unhelpful approach to two other essential matters, that is, protection against discrimination and a legalization program for resident undocumented aliens who have established roots in this country.

It is not appropriate to leave to another day legislative action to counter the possibility that some employers will engage in employment discrimination against persons legally entitled to work in this country in response to the enactment of sanctions against the hiring of undocumented aliens. Yet, all that the bill would do in this regard is to establish a system of annual reports to an outside task force; and if the task force is informed by one of these reports that a pattern of national origin discrimination has resulted from employer sanctions, then it is to recommend to Congress such legislation "as may be appropriate". In our view, the legislation that establishes sanctions must also prohibit discrimination and it must set up an effective enforcement mechanism. The mechanism required, like the enforcement system for sanctions, would be a simple and speedy administrative procedure which can be invoked by private persons as well as by agents of the Government.

Similarly, S. 1200's provisions with respect to legalization offer neither the reality nor even the promise of an actual legalization program. The bill calls for a Presidentially-appointed commission to monitor immigration enforcement programs and programs to eliminate the employment of unauthorized aliens. Only if and when this commission found that federal programs are in effect to control illegal entry and violation of the terms of legal entry, and to "eliminate substantially the employment of unauthorized aliens", and found further that these programs "will continue to remain effective after the implementation of legalization", would a legalization program go into effect.

Even if that day came and legalization therefore could begin, the program would be extraordinarily limited: to be eligible, an individual would have to have been in this country since before 1980; and even if the individual were eligible by all of the bill's detailed criteria, she or he would not be entitled to legal resident status, for the bill commits that decision to the Attorney General's "discretion".

Under these provisions of S. 1200, while it is uncertain whether there would ever be a legalization program, it is certain that if the commission made the certification needed to bring the program into existence at its earliest opportunity, at that very moment what may be several million workers in this country would be locked permanently into what almost amounts to involuntary servitude. All the working undocumented aliens who had come here from January 1, 1980 on would be barred from legalization and would be barred by the sanctions provisions from legally obtaining new employment. But their continued employment by their current employers would not be or become unlawful. Their employers would thus be given virtually the ability to do what these employers chose, with unchecked power over the terms and conditions of these workers' employment. What this would do to the bargaining power of the unions that now represent many such workers — and several AFL-CIO affiliates do represent such workers in a variety of industries — needs no elaboration.

In sum, Mr. Chairman, we have to say with great regret that S. 1200 ignores the possibility of discrimination, and that the bill breaks the essential linkage between — on the one hand — the control of illegal immigration by prohibiting employers from hiring undocumented workers and — on the other — the regularization of status of those many persons whom we have permitted, though they arrived here without authority, to become established and contributing residents of this country.

I turn now to the fourth criterion by which the AFL-CIO must judge immigration legislation, namely, that it strictly limit employer use of temporary foreign workers in this country. Here, S.1200 does just the opposite of what a reform bill should do; it turns over the production and harvesting of America's crops to imported short-term guest workers. While I do not believe that is your intention, Mr. Chairman, as we read the bill it would create a new "bracero" program that would enable the big growers of this country to acquire a captive workforce of defenseless workers. These workers would lack even the minimal protections of the old "bracero" program which experience showed were inadequate to prevent exploitation. That, we submit, exacts too high a moral cost from this country to be tolerated.

The current statutory provisions on this subject — which create what is called the "H-2" program — state that employers are permitted to bring in non-immigrant workers only temporarily and only if "unemployed persons capable of performing such service or labor cannot be found in this country". Thus, employment of such workers is to be the exception not the rule, and such employment is not to undercut the wages and working conditions of similarly employed American workers. This concept has been central to the laws on this subject from the first, and, in light of the current high level of unemployment in this country, we know of no reason why it is any less valid or important today. Certainly in the lengthy debates in the last Congress no one proclaimed any purpose to abandon this principle. But, as we read S. 1200, its abandonment in agriculture would be the inevitable result.

One overriding reality explains the effect of the proposal: if temporary foreign workers dominate a line of employment, it is they and not American workers who determine the prevailing terms and conditions; where "market" conditions prevail, the lowest wage a ready supply of workers will accept necessarily sets the standard for the industry. When to this reality is added the indisputable fact that non-immigrant foreign workers are not in any position to protect themselves, the outcome seems to us obvious: the economic incentive for employers to pay as little as possible and the coercive pressure on would-be employees to accept what is offered them will bring about dismal wages and working conditions.

The bill would bring about just those consequences by doing the following things:

(1) The bill would repeal for agriculture the present statutory bar which prevents the Attorney General from issuing a guest worker visa unless "unemployed persons capable of performing such service or labor cannot be found in this country" (a repeal which we deplore and for which we have never heard any justification);

(2) authorizing a truly open-ended program through

  (a) permission to growers, and to grower associations acting as their agents, to increase the numbers of non-immigrant foreign workers sought at the last moment without making a preliminary search for American workers and without a meaningful opportunity for government review of the grower's claim of an emergency;

(b) the lack of a statutory limit on the size of the program; and

(c) the lack of any limit on the non-immigrant foreign workers' duration of stay on these shores (since the bill provides that the hapless would-be worker on completing one work contract would have the choice of accepting any job offered or being deported);

(3) denying the government any role in the employment contracting process while loosening the present program's worker protections;

(4) granting growers through their associations a truly breathtaking expansion of their rights and immunities, freeing them from the normal rules governing a principal's responsibility for acts of its agents and thus, in practical terms, from the few limitations on the agricultural guest worker program stated in the bill.

It requires a belief in a brave new world which we cannot muster to conclude that the bill's agricultural guest worker program differs in anything but name from the discredited "bracero" program.

In conclusion, Mr. Chairman, the AFL-CIO adheres to its position that immigration legislation is necessary and stands ready to work with you and your subcommittee on the development of legislative provisions that will achieve the four objectives that I described at the outset of this testimony.

II.C.3. Legalization and Enforcement [1]

THE SELECT COMMISSION RECOMMENDS THAT LEGALIZATION BEGIN WHEN APPROPRIATE ENFORCEMENT MECHANISMS HAVE BEEN INSTITUTED

The Commission believes that a legalization program is a necessary part of enforcement, but it does not believe that the United States should begin the process of legalization until new enforcement measures have been instituted to make it clear that the United States is determined to curtail new flows of undocumented/illegal aliens.

Without more effective enforcement than the United States has had in the past, legalization could serve as a stimulus to further illegal entry. The Select Commission is opposed to any program that could precipitate such movement. Further, the absence of effective enforcement could lead to a low participation rate in the legalization program. Continuation and enhancement of enforcement efforts in this country should encourage many undocumented/illegal aliens to regularize their status under the legalization program. Persons found as a result of Immigration Service operations would be given the opportunity to apply for the program if they appear to be qualified.

Senator SIMPSON. Thank you very much, Mr. Donahue.

I do always think you provide some thoughtful information to us, because I know, as I say, of your long personal interest that you have shared with me on several occasions.

Let me ask you if you could just elaborate a bit on how your organization perceives the impact of illegal immigrants upon the wages and working conditions of present U.S. workers.

Mr. DONAHUE. Senator, before I address that question, let me introduce—I am sorry. I should have at the outset noted that I was accompanied by Jane O'Grady, legislative representative of the AFL-CIO, whom you know, and Janet Kohn, who is our associate general counsel.

Senator SIMPSON. I have come to know them both, and I regret I did not greet you when you came to the witness table. Nice to have you here.

Mr. DONAHUE. Our perception, Senator, is unchanged over 20 years or more. It is the perception that the presence of illegal aliens, illegal workers in the work force has a terribly serious effect upon wage levels; it tends to lower wage levels for all workers, tends to displace American workers from employment, and equally importantly, tends to place those illegal workers in an untenable position in the workplace and opens them up to the worst kind of exploitation. And I think, Senator, the record is clear for 20 or 30 years.

Senator SIMPSON. Last year, I know that your organization criticized the conference committee agreement on the H-2 provisions, and I am fully aware of how that scenario took place with the Panetta-Morrison amendment going through the House as it did. It is certainly surprising to me and I think, just as surprising to you. But nevertheless, it was a rather extraordinary vote on that issue, showing that in the Senate, there are two Senators from California out of 100, and in the House, there are 44 Congressmen from California out of 435, and that is the reality of this curious arena.

But is not—and I guess this is the one that I have difficulty chambering and understanding fully—is not a regulated legal flow of H-2 workers, an identifiable group of human beings, preferable to large-scale illegal alien employment in the agricultural sector?

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[1] Commission vote: Yes—16.

Mr. DONAHUE. Something is preferable to nothing. Some regulation is preferable to the current chaos of the flow of illegal aliens into our work force. We think that there are solutions, Mr. Chairman, to that problem, if you start from the premise that I heard the spokesman for the administration start from, that our first concern is the protection of American workers, the insurance that the inflow of foreign workers does not displace American workers or adversely affect their opportunities for employment at decent wage rates. With all of those qualifications, and if you posit for me a nation in which we have a 3 or 4 percent unemployment rate and ask me under those circumstances, are there specific areas or industries in which we might be able to allow a temporary foreign worker program to operate effectively, would that be good, I guess I would say yes. But we are so far from here to there, Mr. Chairman, that it is hard for me to visualize those circumstances.

I think, Mr. Chairman, that agriculture is the last area which has been addressed sensibly in terms of employment policies in this country. We have rationalized employment in most other industries. We have trained people, we have provided methods of searching out people for employment and insuring that there is a pool of labor. We have trained people in other industries, and we have done nothing in agriculture, because we persist in this reliance on the foreign worker.

Senator SIMPSON. You mentioned your support of strong antidiscrimination provisions, which is consistent, and the broadest legalization program possible, which is another clear consistency. Those two issues were the final roadblocks to last year's conference committee successfully reporting an immigration bill. How do you suggest that we handle both the purported high costs of a large legalization program and a general opposition to handling any kind of civil rights legislation included in an immigration reform bill?

Mr. DONAHUE. Well, I think, Senator, that you came very close last year to being able to do those things, and I happen to believe it is worth a repeat effort. I think that unless legalization comes with the sanctions and enforcement, unless those three come as a package at near one and the same time, then one is going to frustrate the other. And I think that they are seamless; it is a seamless garment.

As to the cost, I remember listening to Secretary Califano when he was at HEW some years past—it must be 1978 or so—say that it would have cost $5 to $10 billion for a noncounterfeitable Social Security system. I submit we would have saved at least that much if we had gone ahead with it and done the job.

There may be costs attached to legalization, to the process itself, or the consequences of the process. I refuse to believe that those costs are not appropriate to the Nation, that their benefit does not exceed whatever the cost may be; and that the benefit to the Nation of putting this problem, hopefully, behind us and of regularizing employment in agriculture far outdistance the cost of getting it done.

Senator SIMPSON. A final question, and then Senator Simon may have questions. Congressman Chuck Schumer has proposed that in place of the H-2 changes that this bill might make, that we simply might consider exempting agricultural employers from coverage under employer sanctions and enforce or expand and toughen existing labor laws. How do you respond to that proposal?

Mr. DONAHUE. I would be the first advocate, Senator, of enlarging and enforcing labor standards. There is less prospect of that happening than of you going back to the conference situation which you were in last year. The record of this administration is clear, Senator, in its inability or unwillingness to enforce the labor law, and to assume that that structure which cannot enforce current law can carry an extra burden is simply beyond my ken.

I therefore have no faith in that as a solution to the problem.

Senator SIMPSON. Thank you very much.

Paul.

Senator SIMON. Yes, thank you, Mr. Chairman.

It is good to welcome an old friend as a witness here.

You say in your prepared testimony, talking about employment discrimination,

> The mechanism required, like the enforcement system for sanctions, would be a simple and speedy administrative procedure which can be invoked by private persons as well as by agents of the Government.

Can you tell me a little more, what you mean?

Mr. DONAHUE. We were trying to say, Senator, that the process should be available for the discriminatee himself or herself, rather than be totally an agency solution or be dependent upon the action of an agency. As administrations change, one side or the other has a different amount of faith in the willingness of agencies to go forward on certain kinds of problems. So, we were talking about the right of private action to seek redress for that discrimination.

Senator SIMON. To go into the courts?

Mr. DONAHUE. Yes, sir.

Senator SIMON. All right. Then, you mentioned Secretary Califano, saying it would have cost $5 to $10 billion to get this noncounterfeitable Social Security card. But what if we had a card that was strictly voluntary—Paul Simon, or Tom Donahue would not have to get it if we did not want it—but people who wanted a noncounterfeitable card could get it to prove their status. Does that strike you as a sensible kind of a thing?

Mr. DONAHUE. Well, I suspect that, partially, we have that now, Senator, in terms of driver's license identification or the alien registration procedure and the carrying of that alien registration card.

My concern about systems such as that is the discrimination concern; that the system ought to be one which covers all workers in the work force; every worker should be asked the same question, "Do you have an identification of some sort, noncounterfeitable Social Security, or whatever," and having thus presented that, you have at least proved a case for your employment.

The problem I see with the voluntary systems is simply the problem which would arise for those who would not have them or would not choose to get them. And I do not know how in law you could get around that problem without requiring the universality of the system.

Let me just note, on Secretary Califano's estimate, I am giving you what just came to me as Senator Simpson was asking the question, but that is my recollection. He said it would have cost $10 billion back in 1978 or so.

Senator SIMON. I guess my concern—I think the reality is that if your name is Jose Lopez instead of Tom Donahue—and I am not suggesting that Tom Donahue does not have an accent, Mr. Chairman—and your mastery of English is less than what might be desired, discrimination in fact is going to be very much a threat. If there is some easy way for Jose Lopez to prove, "I am an American citizen"—and a driver's license does not prove that; a Social Security card, the way we have it right now, does not do that—if there would be some relatively simple, voluntary identification thing that Jose Lopez could get ahold of, that would be of help to him and to the employer.

Mr. DONAHUE. I have the feeling, Senator, that you are asking Jose to make the decision that he is about to be discriminated against, and Tom Donahue or his forebears would have had to make that decision some years ago.

So we are setting up two classes and asking people to make the choice whether they think they are about to be the subjects of discrimination or not. I think that creates an unhealthy climate. I think that we are saying to Jose Lopez or to Jan Pavloczech that, "You are likely to be the target of discrimination, and therefore, we are going to give you this card to help you prove that you should not be discriminated against." I just find it unhealthy.

And I would note that Tom Donahue and his forebears were equally discriminated against in this country in their turn, and the Simons in theirs. I do not know at what point, if you assume that we have legalization, enforcement, employer sanctions, and a new wave of immigration from Southeast Asia, from Central Eastern Europe, or wherever, to explain to those people when they come in that they are prospective discriminatees, and therefore, they should voluntarily get this card.

Senator SIMON. But in fact, those immigrants from Southeast Asia, or Jose Lopez, or some others, don't they in fact know that there is a period where discrimination is a fact of life?

Mr. DONAHUE. Wouldn't it be wonderful if it were the fact that they did not have to believe that, Senator? I know you would agree.

Senator SIMON. Yes. I am for creating that world, but I am trying to protect Jose Lopez and his counterparts from whatever country, in the meantime, in some way.

Mr. DONAHUE. Well, a voluntary system does not protect now; there is access to that kind of documentation, yet the concerns persist that if you adopt sanctions, you need some system for identification. I would not hang up, frankly, on the requirement of one card, universally available. I happen to believe very strongly that that is the best system that is available to us, and I think that adequate civil rights and civil liberties safeguards can be built in to such a system. But the bill proposes a variety of ways which, in effect, are the voluntary carrying of the documents that you suggest; and if that is a way of handling it in the short run, that is fine with me.

Senator SIMON. I thank you.

Thank you, Mr. Chairman.

Senator SIMPSON. Fascinating stuff, isn't it?

Senator SIMON. It is.

Senator SIMPSON. Yes; it is. And that was very interesting to listen to that interchange, and I remember it so distinctly on the Select Commission, getting to a universal identifier and assuring that it be used by everybody, not just people with a foreign surname or who look foreign, but as I often say, by bald white guys like me, too. And that was what we did come to, use of existing documents proving not citizenship, but saying simply to people to produce something that says, "I am authorized to work in the United States of America." We do not speak of citizenship. We do not speak of citizenship when we speak of legalization. We are talking about a status of legalization to do something to protect the people that you just spoke of, and that is the 2 to 12 million that are here and being used. Contemporaneous, concurrent legalization which was the fondest hope of that gentleman at that table and this gentleman at this table. And for some reason, they decided, many, to trash the bill, which was the only vehicle for the legalization process. The irony there was full.

But employer sanctions, identification, and discrimination are the things that will swirl around this forever. However, as Tom Donahue knows, and I know, and you know so well, what is happening now in the United States, if it continues, is a serious, serious defection from what we ought to be doing in this country, because people are being used. And that is the tough one.

I had one other question, because I think of how the AFL-CIO has been extraordinarily helpful to me, and supportive, and not because I happened to wander into the foray, but you have been on record for years in support of employer sanctions, and you also have been on record for years supporting legalization. But the interesting thing is that most of the strong supporters of legalization are not strong supporters of employer sanctions, and you are really nearly unique in that regard.

Would you not agree, perhaps, that a triggered legalization would encourage the employer sanctions naysayers—and they are there—to join in rather than to obstruct and obfuscate and cloud the issue, the effort to put effective sanctions and increased enforcement into place makes them know that this cherished ideal of legalization is swiftly coming?

Mr. DONAHUE. Well, Senator, we started off back in the 1970's—in the early 1970's—supporting a sanctions piece; and for a number of years, we said that what was then spoken of as amnesty ought to be dealt with, but we did not have a strong and supportive position for it. We said that we would accept whatever came out of a Senate or House bill in terms of an amnesty provision, because we had a single-minded concentration on the sanctions question, on the disemployment effects of illegals working in the United States. In 1978 and 1979, that position changed, and we came, then, to state support for the broadest amnesty possible, and now for the broadest legalization program.

I think that they absolutely go hand in hand; and I think, Senator, on the select commission, as you suggest, everybody believed that; I do not think that, on that commission, you were looking to a program which would be triggered at some distance from the sanctions. Indeed, one of the problems I have with this bill is the adherence to the 1980 date. I know the cost factors involved, but the select commission said in 1981 that you ought to legalize everybody that is in the country up to 1980. It said we ought to step up enforcement and provide more funds for the Immigration and Naturalization Service, and that we ought to have a legalization program.

All of those things, I think, most of the members of the select commission saw as coming quite close in time. I certainly never envisioned, Senator, a program in which you would first move with sanctions and enforcement, and then wait until there was a demonstrated effect. I do not really know what that means, and it is hard for me to deal with that one.

Senator SIMPSON. The phrase, I think, in the select commission was legalization after employer sanctions were implemented, and then there were some supplemental views on that issue, and it was discussed that we should not see legalization come until employer sanctions had been implemented, or after shown to be effective, I think was the phrase. Now, that is what the select commission said. So, in a sense, I was the one that jumped ship—I think the phrase was instituted—legalization after employer sanctions were instituted was what the select commission said, you see.

Mr. DONAHUE. Yes, sir.

Senator SIMPSON. And then there was discussion about the fact that they be shown to be effective. So I was the one that jumped ship of the 16, when I said we will make them concurrent and contemporaneous—bam, right there—whether they are instituted or effective.

So that was an interesting part of the debate, I remember so well.

Let me ask you just one final question on agriculture, because it is important, and you know and I know how effective agriculture can be in this area, don't we. The H-2 Program in S. 1200 requires that U.S. workers be searched for first, that we try to find them first before H-2 workers are admitted, and that the wages and working conditions offered to those H-2 workers will not adversely affect U.S. workers—would not, then, you believe that S. 1200 should be sufficient to protect U.S. workers, because they are the exact same protections built into the current H-2 Program?

Mr. DONAHUE. Senator, as I understand the legislation, the requirement that U.S. workers "be searched for," that domestic workers "be searched for" becomes the sole province of the employer-grower, and he makes his own judgment as to whether or not domestic workers are in fact available, having decided he has searched assiduously enough.

That is a long way from an H-2 certification under the current rules, where an employer demonstrates to the satisfaction of the Department of Labor that a faithful search has been carried out, and that American workers are not available.

As I read your bill, all of those safeguards disappear, and the judgment is made by the employer himself. Even in some of the earlier versions, as I recall 2 or 4 years ago, there was the substitution of an agricultural agent at one point, a representative of the Agriculture Department, to make that determination.

But there has always been some suggestion that there be some official judgment beyond that of the grower, and that there be some measurement of the extent to which there is or is likely to be adverse effect.

Your bill provides for a judgment as to what is an emergency and as to how quickly workers have to be found; I suspect that growers would be inclined to make that judgment very subjectively.

Senator SIMPSON. I would hope that you would, and then share with me your views. Take another look at S. 1200, because Panetta-Morrison did have an employer determination in it, but this bill of mine does not, and it provides for a Labor Department certification.

So, there is official judgment. I would like to visit with you on it, because conceptually that is what we are trying to do, include for the first time at least an observation platform for the Secretary of Agriculture who, it seems to me, ought to be involved in agricultural employment in the United States, without thrashing the Department of Labor in the process. That was one of the curious things to me to deal with, that the Department of Agriculture never was involved, really, in the things which were of deep and poignant interest to the agricultural community. But take a look at that and give me your thoughts.

Mr. DONAHUE. We certainly will, Senator. The concern we had is the declaration of emergency, if you will, which under the legislation, as I understand it, would eliminate the necessity for a domestic search. And I am not sure how that would work. But yes, we would be glad to take another look at it.

Senator SIMPSON. OK.

Mr. DONAHUE. May I just offer one further word on the legalization issue?

Senator SIMPSON. Sure. Go ahead.

Mr. DONAHUE. Not to be argumentative on the point. The select commission report, as I read it, said the commission is of the opinion that legalization following the institution of new, more effective enforcement measures would be in the national interest for many reasons. I do not quarrel with the phrase "following the institution," but I think that is a long way from the institution of the enforcement and the demonstrated effect of those sanctions. Indeed, there are a number of separate opinions, at least in the select commission report, which speak of the need not to delay the legalization. Senator Kennedy says it should be undertaken at the same time new enforcement efforts are initiated. Secretary Marshall said immediately following enactment of sanctions. Jack Otero, the labor member of the commission, endorsed the recommendation that it follow institution of enforcement measures, but he confirms that he believed it was to immediately follow. And Judge Cruz Reynoso said the commission has stressed that tough enforcement must perhaps precede but, at any rate, go hand in hand with the legalization program.

So I do not think you would find a ringing endorsement of wait until there is a demonstrated effect of these provisions.

Senator SIMPSON. No, indeed not. I have never found any ringing endorsement anywhere, anywhere in any possible parts of this. But it was a theme that without more effective enforcement, we are certainly going to increase illegal immigration, and that was a key. The word institution was a tough one for us, because I remember we grappled with the word implementation. The issue is we have a problem. You recognize it. No one testifies to me that does not recognize it. So you have been very helpful.

Again, thank you.

Mr. DONAHUE. Thank you, Senator, and Senator Simon. We thank the committee for this opportunity to appear today.

Senator SIMPSON. Our next witness is the honorable Alan Nelson, Commissioner of the Immigration and Naturalization Service. And since I have not used the clock on anybody, Al, you would not want me to use it on you, would you?

Mr. NELSON. No, sir. I will be brief.

Senator SIMPSON. But knowing that, you would be very, very brief, wouldn't you?

Mr. NELSON. Yes, sir.

Senator SIMPSON. Well, the clock will not run today. It would be unfair to do that to you.

It is good to have you here, Commissioner Nelson. Tell us what's up.

STATEMENT OF THE HON. ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Mr. NELSON. Senator Simpson, Senator Simon, it is a pleasure to be here. I appreciate the opportunity to testify before you today in support of immigration reform as reflected in S. 1200, the Immigration Reform and Control Act of 1985.

As the previous witnesses have indicated, and as has almost every witness that has come before you in the last several years, we do have a serious problem in this country with illegal immigration. Last fiscal year, we had more apprehensions than ever—over 1.2 million. That was the second year in a row, and will continue this year, based on the trends.

In 1 week in early June in Los Angeles, we apprehended over 900 employed illegal aliens in a small area, and many of these factories had between 150 and 200 illegal aliens working each. They were 60 to 70 percent of their work force, earning $5 an hour or more for semiskilled or unskilled jobs, another indication of a serious problem.

Further, our cooperative efforts with State and local governments have shown a significant degree of entitlement fraud by members of the illegal alien population. All those factors together clearly demonstrate that there is no status quo in this area and that the situation is getting worse.

It will continue to do so until positive action is taken by Congress to provide the added legislative authority necessary to gain control over the entry and the presence of aliens in this country.

S. 1200 has the necessary elements, Mr. Chairman, for enhanced enforcement, humanitarian concern, and meeting legitimate needs of employers, and it does address many of the concerns that have been raised during past years, as you indicated, in a very difficult area.

Clearly, employer sanctions are the cornerstone of this legislation. They are absolutely essential as the House recognized—and I believe Senator Simon was in the House at the time—in the Seventies, by passing a sanctions bill twice by large margins similarly as of the Senate in the last several years, recognize that this is the only credible remaining tool in addition to what we now have to remove the magnet which attracts many illegal aliens.

I think the provisions you have, Mr. Chairman, in the sanctions part of your bill are generally very good. You have a simple and reasonable verification process. You remove some of the problems pointed to last year for employers in recordkeeping and avoid the penalty for simple failure to keep records; we think that is good.

We believe these provisions under the sanctions part of your bill are necessary, as indicated, and in fact, protect and safeguard civil rights.

It seems quite unfortunate, as we have had much testimony and argument over the years on this discrimination issue, that the real discrimination that now exists with respect to Hispanic Americans, many black Americans, and many others, is the existing discrimination that illegal aliens are taking jobs from American citizens and lawful aliens. I would cite my example of a moment ago of the 900 jobs in Los Angeles. These are 900 jobs that many Hispanic Americans, because it is right in their residential area, could have. Now, that is clear discrimination while we talk about a lot of speculative concern about others. We think the provisions in your bill are sound and solid in dealing with the discrimination issue.

The penalty provisions under your bill are progressive. As you recall, there had been a debate between civil and criminal penalties. We believe your civil penalty and the progressive structure is a very sound approach. Clearly again, using this Los Angeles example, if you had even a $100 fine, you would be talking about very substantial fines to employers of substantial numbers of illegal aliens. This is good.

The phase-in approach in your bill provides a 6-month notice period and a 6-month warning period, a total of 1 year before sanctions go into effect. This is a good approach, a good phase-in approach. It also will focus on the need for voluntary compliance, which we believe not only is critical, but will in fact happen to provide long-term effectiveness of sanctions.

Also, the use of existing documentation as provided in this bill would be an effective means for verifying eligibility. While we all like a much more secure system, the realities of the cost and ability to do it, plus the libertarian concerns and others, are such that what you have here is a solid system.

Let me now turn to the aspect of the bill of increased border and other enforcement.

S. 1200 authorizes additional resources that would enable the INS to be more effective along our land and sea borders at ports of entry and in the interior. There is little question, and I think as Congressman Richardson says, we have to realize that immigration is not only a domestic defense, but has a clear relationship with foreign policy. We are pleased to have the full endorsement of the administration here—that these increased resources as set forth in the bill are supported fully, and that it is recognized that they are cost-beneficial. The added resources in your bill are more than offset, or will be more than offset, by savings through reduced job displacement, reduced entitlement payments to illegal aliens, and less other negative impacts not only economic, but legal and social, in this country.

Even more importantly, failure to enact legislation and the resources to support it, will greatly add to future dollar and societal costs associated with continued increases in illegal immigration.

The legalization area is a very difficult area, as you have indicated, Mr. Chairman, and certainly as indicated by the dialogue with the past witnesses. As President Reagan has stated very clearly on numerous occasions, this administration favors the concept of legalization. We reaffirm that support today.

We recognize that the deferred legalization which was endorsed by the bipartisan Select Commission is a sensible approach. We believe it strikes an appropriate balance between enforcement and some of the serious cost issues which have arisen.

Certainly, the trigger can reduce fraud by new illegal aliens attempting to get here to make use of the legalization program, and very importantly, as I believe all Members of the Congress have indicated, help assure that legalization is in fact, as intended, a one-time—only program.

The provisions in the bill about eligibility for financial assistance are likewise fair and sensible. The entitlement assistance, with an appropriate cap to the States, is necessary to offset some of the costs incurred and, we think, it is appropriate. As Deputy Attorney General Jensen indicated, we do not, however, support the reimbursement of State and local costs of imprisoning illegal aliens, although I think some of our efforts as reflected in the Mariel or the Cuban agreement, which unfortunately now is suspended, reflected our interest and our efforts to work with the States to move people out of the State system upon completion of their sentences.

We would say, and very clearly hope, that State and local governments will recognize that these provisions strongly benefit them, and address their needs. We would look forward to working closely with State and local governments on these cost issues.

Regarding the temporary foreign agricultural worker program, the administration supports the goals of S. 1200 of protecting domestic workers from adverse impacts due to foreign labor, while providing a legal means for the entry of temporary foreign workers where the needs cannot be met by domestic workers. The important point is that this whole program is meant to be a transition where United States agriculture will use legal workers, and the importance of that must be stressed.

I will be very brief about other provisions in the bill. Certainly, we strongly support the amending of section 274 regarding the unlawful nature of bringing in an undocumented alien to the United States; it needs to clear up some confusion. There are a couple of technical problems, and we would like to work with the committee on that. Clearly, the language regarding seizure and forfeiture and dealing with penalties for counterfeit or altered identification documents are very sound and necessary.

Several additional suggestions are included in the testimony—and I would like to ask that the complete testimony be part of the record Mr. Chairman—are several points for consideration, as indicated on pages 14 and 15, several points. One is that we believe it would be helpful to have specific language in the bill making it clear that employers can ask prospective employees as to their right to work in the United States without any constitutional or other challenge. This is the positive aspect of the employer sanctions, and we think it will enhance voluntary compliance.

With respect to voluntary compliance, again, the bill will work because employers will voluntarily comply, and we think some additional language encouraging voluntary efforts could strengthen the bill.

Also, I have mentioned on several occasions entitlement problems. The SAVE Program, Systematic Alien Verification for Entitlement, has worked very, very well. It has saved millions of dollars in the several States that have implemented it. We believe there could be some reference in the bill to that, particularly in the reporting requirements.

In conclusion, Mr. Chairman, S. 1200 provides the necessary tools to effectively administer the immigration law. It is a balanced product of long hearings and negotiations, careful compromises, drawn up in the past in the Senate and the House and in the conference. We want to applaud your efforts, Senator Simpson, to make this a workable bill which we believe it is subject to practical and prompt implementation.

Thank you.

[Statement follows:]

PREPARED STATEMENT OF ALAN C. NELSON

Chairman Simpson and Members of the Subcommittee,

I am pleased to be here and testify in support of immigration reform as reflected in S. 1200, the Immigration Reform and Control Act of 1985. We have met on numerous occasions to discuss the seriousness of the illegal immigration problem. Your subcommittee, the Judiciary Committee and the full Senate have consistently supported the need for prompt passage of effective legislation.

Again during the last fiscal year, the illegal flow increased as evidenced by even more apprehensions of illegal aliens at the border. Recently in Los Angeles we apprehended in one week over 900 employed illegal aliens who were working. Several factories employed 150-200 illegal aliens each, representing 60-70 percent of their workforce. Our cooperative efforts with state and local governments have shown a significant degree of entitlement fraud by members of the illegal alien population. These factors demonstrate conclusively that there is no status quo, that the situation is getting worse. It will continue to do so until positive action is taken by Congress to provide the added legislative authority necessary to gain control over the entry and presence of aliens in our country.

Mr. Chairman, I commend you for all your past efforts as well as for the introduction of this vital legislation.

S. 1200 the Immigration Reform and Control Act of 1985, is a multi-faceted approach to the multiple immigration problems that we face in this country. It has the necessary elements of authority for enhanced enforcement of the law, humanitarian concern for aliens who have established strong and abiding commitments to the United States, and provisions whereby the legitimate needs of employers may be met. It has the added advantage of addressing many of the concerns that have been raised during past years.

The conditions which have led to our present problems in immigration are neither new nor unusual. The United States has for many years presented an attractive way of life to people from much of the world. The individual freedoms of its residents and the opportunity to better one's place in life have encouraged immigration since the very beginning of our country. Because of this, we have developed as a nation with all the benefits which people from every part of the world can enjoy.

However, as you, Senator Simpson, have repeatedly pointed out, a sizable portion of the American public has become disenchanted with immigration. Many persons confuse the illegal worker and the alien welfare cheater with the legal immigrant who has come to contribute to this country as well as benefit from it. Unless we gain control over illegal alien migration and presence in the United States, the American people may reject all immigrants rather than those who attempt to enter outside our legal system.

Through the placing of sanctions on the knowing hiring of illegal aliens or those who are not authorized to work in the United States, the bill addresses one of the primary reas aliens enter illegally or, after legal arrival, violate the cond tions of their admission.

By providing, after effectively stemming the flow of illegal immigration, for the legalization of aliens who have resided in our society for several years, the bill recognizes the reality of this situation and presents an approach that is worthy of serious consideration.

The bill recognizes that employers may have legitimate short-term needs for foreign workers, especially as employer sanctions are implemented in agriculture or other industries, and provides the means for the admission of such workers if U.S. workers are not available or adversely affected.

Employer Sanctions

A cornerstone of the bill is the sanctions which would be imposed on the knowing hiring of aliens not authorized to work in the United States. Although there are other reasons for illegal immigration, employment is the most compelling. This provision is absolutely essential to gaining control of our borders; only through this means can we remove the magnet which attracts so many illegal aliens to our country.

The bill makes it unlawful to knowingly hire, recruit, or refer for employment an alien not authorized to be employed in the United States, and generally makes it unlawful to continue to employ an already hired alien after learning that the alien is not authorized to work in the United States. The bill requires that a person who hires, recruits, or refers an individual for employment must follow an employment verification procedure or be presumed to have knowingly acted with regard to any illegal aliens later found to have been hired, recruited or referred by him. That simple and reasonable verification procedure consists of completing a short form for each individual and attesting under penalty of perjury that the person's right to be employed has been determined through an examination of documents which identify the individual and show that he or she is eligible to be employed in the United States. An individual who seeks employment in the United States must also complete a simple form and attest under penalty of perjury that he or she is a United States citizen, an alien who has been admitted for lawful permanent residence, or an alien who has been authorized for employment.

We believe that in general these provisions are appropriate and necessary as a means of controlling illegal immigration to the United States while safeguarding civil rights. In fact all too frequently the reality is that U.S. citizens and lawful aliens are discriminated against when employers intentionally hire illegal aliens to create a more malleable and exploitable work force. Equality of employment opportunity for United States citizens and lawful permanent residents is not diminished by this bill. The employment verification system of the bill is intended to balance the burden of additional paperwork with the need to provide employers with a means to prove that they have complied in good faith.

Although I would hope that all employers would utilize the verification system, the penalty for simple failure to keep records has been removed. However those employers who fail to follow the verification system will lose their affirmative defense that they have not knowingly hired an illegal alien, so a strong incentive remains to keep the paperwork.

The bill provides a penalty structure based on the principle of progressive penalties. Civil fines may be assessed only after notice has been provided and a hearing, if requested, has been conducted before an officer designated by the Attorney General. The failure to pay civil fines, will be brought before the appropriate United States district court.

The bill also provides a phase-in approach which provides for education and warning periods in advance of full implementation of sanctions. It gives both employers and the government the opportunity to focus on voluntary compliance which is critical to the longterm effectiveness of sanctions.

Employment Eligibility Verification

A reliable means of determining the employment eligibility of all job applicants is fundamental to employer sanctions. However, the Administration is opposed to the creation of a national identity card or system. We believe that the use of existing documentation as provided by this bill would be an effective means for verifying eligibility and screening illegal aliens from participating in the work force. Furthermore, we believe that the monitoring of this employment verification system and careful executive and Congressional review of any proposed changes will assure that the verification system respects our values of individual liberty and privacy.

Increased Border and Other Enforcement

The enforcement activities of the Immigration and Naturalization Service have been enhanced with the increased border resources that have been proposed by this Administration, authorized by your subcommittee and appropriated by Congress. S. 1200 authorizes additional resources that would enable the INS to be more effective along our land and sea borders, at ports of entry, and in the interior.

There is little question that immigration enforcement is truly "domestic defense" -- our borders must be placed under control. We believe that the increased resources to carry out the purposes of this legislation are cost beneficial -- the added resources are more than offset by savings through reduced job displacement impact and reduced entitlement payments to illegal aliens. More importantly, failure to enact legislation and the resources to support it will greatly add to future dollar and societal costs associated with continued increases in illegal immigration to this country.

Legalization

The provisions of S. 1200 which allow the legalization of specified aliens who are presently illegally in the United States are in response to a circumstance which we intend not to allow to recur in the future. Your approach to establish a Legalization Commission with the responsibility to assess and confirm the existence of effective enforcement measures before allowing the commencement of the legalization program appears to be reasonable and will receive additional consideration.

The legalization program would begin after the Legalization Commission concluded that enforcement measures were in place, that controlled the illegal entry of aliens into the United States and deterred violations of the terms of legal admission. Additionally the Commission would determine that the employment of unauthorized aliens had been substantially eliminated. This deferred legalization provision is designed to deter persons who otherwise might attempt to enter or remain illegally solely to attempt adjustment through an immediate legalization opportunity.

As President Reagan has stated, this Administration favors the concept of legalization. We reaffirm that support today. We recognize, as Senator Simpson has indicated, that the deferred legalization which was endorsed by a bipartisan, blue ribbon Select Commission on Immigration and Refugee Policy in 1981, is a sensible approach. We believe it strikes an appropriate balance between enforcement and some of the serious cost issues which/have arisen.

The bill will allow temporary residence to be granted to aliens who have been in the United States illegally since before January 1, 1980, and to Cubans and Haitians who have been in the United States since before January 1, 1981, and were known to the Immigration Service. After thirty months, aliens who initially qualify for temporary residence would be allowed to apply to have their status changed to permanent resident if they continue to reside in the United States and remain eligible under the other provisions of law. They would also need to demonstrate a minimal understanding of ordinary English as well as a knowledge of United States history and government.

Aliens who do not meet the standards for admission to the United States and whose residence would be contrary to the public interest would not qualify for temporary or permanent residence. This includes aliens who have been convicted for any felony or three or more misdemeanors committed in the United States as well as aliens who have assisted in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. Similarly, aliens who are not able to overcome the "public charge" exclusion of the Act will not be eligible for legalization.

The legalization provisions of S. 1200 are designed to ensure that only aliens who are and will be productive members of our society can qualify for residence. The triggering of the legalization provisions by the bipartisan Legalization Commission should reduce the number of new illegal aliens seeking to enter the U.S. in order to obtain this special benefit, and should help ensure that legalization is a one-time only program. As I stated earlier the Administration is committed to work with you to insure that our mutual goals are realized.

Benefits to Permanent and Temporary Residents

Aliens who are granted temporary or permanent residence under this provision would not be eligible for six years for financial assistance furnished under Federal law. This appears to be is a fair and sensible provision since we believe that such aliens should and will be self-supporting members of their communities.

Entitlement assistance with an appropriate cap to States is necessary to offset costs incurred by them in providing assistance to legalized aliens when it is required to meet emergency subsistence or health needs of those individuals and when it is required in the interest of public health. We do not support reimbursement of state and local costs of imprisoning illegal aliens. However, we will work with state and local officials to assure the prompt removal of such aliens upon the completion of their sentences.

We strongly hope that state and local governments will recognize that these provisions strongly benefit them. We believe this bill addresses their needs in a fair and balanced way.

Temporary Foreign Agricultural Workers

The Administration supports the goals of S. 1200 in protecting domestic workers from adverse impacts due to foreign labor while providing a legal means for the entry of temporary foreign workers when need is clearly shown and that need cannot be met by domestic workers. This will be extremely important if we are to have effective sanctions against the hiring of illegal aliens as well as to avoid the harmful effects that shortfalls of domestic workers would have on some employers, particularly agricultural employers, as they make the transition from dependence on illegal workers to reliance on legal workers.

Other Provisions

S. 1200 would amend section 274 of the Immigration and Nationality Act to make it unlawful to bring an undocumented alien to the United States, even if that alien is presented to an immigration official and regardless of whether that alien is allowed to remain in the United States in parole status. This will resolve the problem created by the court decision in U.S. v. Anaya, et al., (No. 80-231-CR-EPS), where persons who had transported Cubans in the Mariel boatlift were found not to have violated section 274. Unfortunately the provisions also delete the current provision, section 274(a)(4) which prohibits the willful encouragement or inducement of the entry of illegal aliens as well as a portion of section 274(a)(3), prohibiting attempt to conceal, harbor, or shield from detention such aliens. These deletions would seriously hamper enforcement.

The legislation also adds helpful language to the existing seizure and forfeiture provisions. Further, S. 1200 appropriately increases the felony penalties for activities involving the use, manufacture, or sale of counterfeit or altered identification documents, or those documents relating to those individuals, in order to satisfy a requirement of the Immigration and Nationality

Act. This will be of particular importance with regard to the implementation of employer sanctions.

Finally, the Administration has long supported a pilot non-immigrant visa waiver policy, for qualified countries provided that there are appropriate safeguards in place to prevent illegal entry into the United States.

The Immigration Reform and Control Act of 1985 provides the necessary tools to effectively administer the immigration law and system. It is the balanced product of long hearings, negotiations among contending interests, and careful compromises drawn up by Members of both the Senate and House Judiciary Committees. I particularly want to applaud your efforts, Senator Simpson, to make this a workable bill, which is subject to practical and prompt implementation.

Additional Suggestions

In addition to providing you in the near future with the Administration's overall position on the bill the Justice Department and other concerned agencies will be offering the Committee additional suggestions that we believe will further improve the effectiveness of this important proposal. At this time, however, I would like to offer the following comments.

First, the legislation should contain specific language authorizing employers, recruiters, and referrers to inquire of applicants of their legal status to work in the United States regardless of their United States citizenship or permanent resident status. Some employers have shown hesitation in this area and are concerned about possible litigation. This is an important supplement to sanctions and will assist employers to pursue voluntary efforts to hire legal workers.

Second, as I noted above, employer sanctions will be fully effective only with substantial voluntary compliance by employers.

I suggest the addition of language to encourage voluntary efforts by employers to seek such assistance from the Service to screen illegal aliens from their workforce.

Finally, the recent SAVE program (Systematic Alien Verification for Entitlement) shows that states can save millions of dollars in entitlement costs by establishing appropriate computer verification of the status of applicants for assistance and by not paying benefits to illegal aliens not entitled thereto under the law. The cooperative efforts of states and the Federal government in this area should be part of the reporting and analysis requirements in the bill relating to impact costs and enforcement efforts.

Conclusion

In conclusion, on behalf of the Immigration and Naturalization Service I again want to express my appreciation to the Chairman for the introduction of S. 1200 and his yeoman efforts to effect immigration reform. As Commissioner I am particularly aware of the critical need for immigration reform contained in this legislation. S. 1200 represents a thoughtful effort at providing both the vehicle and the opportunity to rededicate ourselves to the fair and firm enforcement of our immigration laws. The Immigration and Naturalization Service and other affected agencies look forward to working with you and all the members of the subcommittee in this endeavor.

Senator SIMPSON. Thank you very much, Mr. Nelson. You are the one on the firing line, with your remarkable people that you have jurisdiction over, forced to enforce the laws of the United States. People share with us, "Well, you know, if we just enforced the law in the United States, we would not be here," and that is why I have the greatest admiration for those people in the INS, because there is no way that they can do anything but become paranoid and confused by enforcing the laws of the United States, because it is legal to hire an illegal, but it is illegal for the illegal to work. That is the law of the United States of America, and I keep pounding on it. I think people finally hear it. To sort of go back to that is such a hollow babble. And it is amazing to me that people will serve with pride and honor in the Immigration and Naturalization Service in the face of a tremendous public cry for more enforcement, then less enforcement, and more humane treatment, and I do not know how you walk that fine line. We should have a little rule of procedure, that you cannot really rip and snort about the INS until you go on a night patrol with the INS on the border. Maybe that will come to pass. It would be my earnest recommendation that that take place to see the frustration, the banter, the rapport, often, with the persons who are there and have been seen before many times, perhaps by the INS. It is a fascinating experience, indeed.

And of course, in this bill, resources given to the INS are rather extraordinary. We provide authority for 700 more border patrolmen and 500 more interior investigators in this bill. And no one objects to that. How curious that is to me, because without doing anything, we will do that anyway. Eventually, we will get to that whether me have immigration reform legislation or not, because that is what people are demanding, and that means without reform, we will have more sweeps, more intrusions into the workplace, because you will be then doing what we demand that you do—that is your job—we will see that you carry it out and give you the resources.

So, in this bill, with those resources, do you see that as significantly improving the enforcement of current immigration laws, even in their tattered form? Do you see that as helpful? And then, under the bill itself, do you see that as being adequate?

Mr. NELSON. Yes, Senator Simpson, we do. And if I might digress for a moment to your suggestion of Congressmen or others viewing a night operation at the border, I might just comment publicly I know many of our friends from the media have done that. But I would very much encourage any Member of Congress to do so, because I think it is, as you say, one of those things you really have to see to get a flavor of the situation. So I would offer a standing invitation to any Member of Congress to have such a visit, and we will be pleased to arrange it.

With respect to your question on the adequacy of the resources, yes, you have given a very substantial increase to INS in the bill, the $840 million in the first several years. This is a significant increase of about $260 million over our current budget, and would add about 3,000 additional people for all aspects. We think that is very fair, generous, and necessary, and as you point out, it has been accepted as being a realistic approach.

Clearly, sanctions would require additional interior enforcement aspects, and this would allow us to do it.

As I stated earlier, and as Mr. Jensen did, we seriously and very strongly believe that there is a very substantial cost benefit for the United States citizen. By putting additional money into the immigration enforcement as part of a balanced program, we actually are saving substantial amounts of money now and in the future, and I think that is important.

Also, today, we are very much faced with a constant recognition of terrorism and drug issues. It is probably not known that the INS apprehends about 65 percent of all drugs along the land borders, and we have been doing a very effective job in dramatically increasing the amount of drug seizures we are making in coordination with DEA, Customs, and other organizations, so that every dollar that is being put into increased border enforcement is also helping in the drug area and likewise in the terrorist area. We have apprehended recently a number of very significant potential terrorists that have been coming across our borders. This, again, is another aspect of effective border control.

So altogether, we do believe, Mr. Chairman, that this request in the bill for the additional resources is appropriate, necessary, and does give us the ability to carry out not only our existing enforcement, but the new enforcement authority as the bill would provide.

Senator SIMPSON. I was interested, and I think many in America were interested that our antagonist, Nabih Berri, is a green cardholder in the United States and has a former wife and several children in Dearborn, who I would think are probably being rather carefully observed these days—curious, fascinating stuff. Enough of that.

Triggered legalization. This approach—would this help or hinder in your ability to conduct a successful legalization program?

Mr. NELSON. We think it would help, Mr. Chairman. We realize this is a delicate balance on this issue, and there has been a lot of testimony, including our own, on that subject, and as indicated, we support legalization. But there is a lot of merit in the trigger mechanism.

No. 1, as indicated, we want to be sure this is a one-time-only program.

Second, there is no question that people will use fraudulent documents to try to get into the system and to come across the border to get into it. So the more we can do to get the enforcement mechanisms in place, the better.

A third point is our ability to do the legalization and sanctions concurrently. In the last year or two as we prepared for a bill which we expected and hoped would come, we put a lot of time in a working task force to be ready for legalization. We were ready, and we will be ready to implement it. However, it did take and will take a tremendous amount of resources that would divert to some extent from the sanctions, so there is some reason to have a delay.

I might also indicate that often it is not apparent that the sanctions provision itself has a deferral of 1 year before they go into effect. So the idea of a deferred, phase-in-type approach also in legalization, has a great deal of merit.

You have alluded to the Select Commission. You certainly are going back to their philosophy. It is not a regressive approach at all. It is a practical balancing. And I think much depends on the American public's attitude. Much of the American public has some serious problem with legalization, with the rewarding of lawbreakers. We think your triggering mechanism is a proper balancing to get to the legalization, but to be sure we do it in an orderly and reasonable fashion.

Senator SIMPSON. Just one final question, and let me then defer to Senator Simon. How will the new employer sanctions provisions affect your enforcement responsibilities, that is, the presumption of knowing hiring if no paperwork is kept, the issuance of cease and desist orders by immigration judges when we find these people who choose to simply proceed with this kind of practice, and third, the right of private parties to initiate complaints that the INS may then investigate, please?

Mr. NELSON. Well, again, as I testified in the body of my testimony, Mr. Chairman, we think you have a very balanced system of employer sanctions. Trying to avoid a tremendous amount of paperwork for small emloyers is good. I think you have that kind of balanced coverage of all, but exempting the four under-employers from the paperwork. We think the I.D. system is good.

So we think it is a very workable type program. The cease and desist order part is clearly very important, because with these major employers that I alluded to, the employers or 200 or so, not only can they be fined substantially, but if they ignore the cease and desist order you can bring the court system into play to get an injunction that cannot even be punishable by contempt and get additional clout. So we think that is very good.

As far as the right of private parties to initiate complaints, that happens, of course, a great deal now, and very interestingly, most of our leads come from private people calling in saying that illegal aliens are working at a certain place, often because they think it might be impacting their ability to get a job. And again, very interestingly, in the Southwest, most of our complaints come from Hispanic citizens who are complaining about illegal aliens, often Hispanics, that are taking jobs that they think could go to them or their families.

So we think again, overall, it is a very balanced program you have in S. 1200 on sanctions.

Senator SIMPSON. I just had one other question, and that was on the search warrant requirement. I remember distinctly how it was warding off the Farm Bureau and the ACLU, and that is a tough combination, I can tell you, and I lost, and it probably will happen again, too, because it is a formidable pair of organizations in the United States.

But could you please explain to the subcommittee the difficulties that you have, briefly, if this requirement is imposed on your ranch and farm checks.

Mr. NELSON. Yes, Mr. Chairman. I appreciate your feelings on this subject and the fact that it is not in the bill, and I hope that remains the case as it goes through Congress. We realize that it was put in last year.

I think there has been a lot of misconception on the open field search. The Supreme Court just last year reaffirmed a long historic analysis of the fourth amendment that search warrants do not apply to open fields, and that is for a lot of very good reasons. It is sort of interesting—the *Oliver* case is a drug enforcement case, and one of the biggest concerns as we look at the broader picture is if Congress would decide to do what the courts have said is not required, we could greatly impact drug enforcement, and I think that would be a very, very sad thing, way beyond immigration.

Now, obviously, it is a tremendous problem when you have got open fields, often with ownership records which are not clear, often without clear boundaries, and it would be a difficult job to enforce, and it would create some real problems.

I think it is also a little ironic that some of the growers' groups, and I would just emphasize "some" here, want their cake and eat it, too. They want an expanded program to bring in foreign workers—and we agree with that concept—but on the other hand, they would like to tie your hands and create a law enforcement rule that the courts have said is not necessary, that would make it more difficult to enforce those laws.

It seems a little bit inconsistent, and we would hope that the Congress would recognize this, that it would create serious problems for INS, it would open up the door to greatly deter our drug enforcement and other illegal organized crime and others that use open fields. It would send a very, very bad signal. And, since the court has ruled it is not necessary, we would hope that Congress would see the same.

Senator SIMPSON. Thank you very much.

Senator Simon.

Senator SIMON. Thank you, Mr. Chairman.

Commissioner, we appreciate your testimony. You testified on February 28, 1983—and I am quoting—"We are confident we can effectively implement both the legalization and the employer sanctions provisions."

My office in Chicago says that your office there is understaffed, just overloaded. Are the employment provisions for your staff in this bill adequate so that you could say again, as you said 2 years ago, that you can go ahead and effectively implement both the legalization and the employer sanction provisions?

Mr. NELSON. Yes, Senator Simon. I certainly stand by that statement. And as I say, we have done a lot of work to plan for both the sanctions and legalization, which would enable us to do it better. And in response to Senator Simpson, I do believe the resource provisions of the bill are very fair and adequate to carry out both of those provisions.

Senator SIMON. Forgetting this bill, forgetting its predecessor, if you were just Alan Nelson, writing the ideal legalization bill that would be easy for you to administer, how would you write it?

Mr. NELSON. Well, it is probably very difficult, Senator, for any one person to write a bill, much less the huge committee that you have to deal with, because it is a difficult area, and requires much balancing. And I think the efforts of Senator Simpson, Congressman Mazzoli, and everybody involved have been very good. And while the delay has been unfortunate, as long as we are committed to a result, we can come up with the best solution possible.

Now, I do believe, as I responded to Senator Simpson, that what he has proposed this triggered approach, is an effective approach. I think certainly the dates are important. I think we must remember that legalization is not to clear the decks of all the illegals; it is to recognize that some have been here for a long time, have established roots, and that they have equities. These are the reasons why the 1980 date makes a good deal of sense; avoids the fraud problem, avoids having persons benefiting from their illegal acts as compared with people who are waiting patiently overseas for many years, and represents a fair balance. So we think that is important.

We certainly believe the other provisions and the entitlement benefits, what they can get and not, are also well-balanced.

So we believe basically what is in S. 1200 right now is pretty close to a complete and proper provision. We proposed last year—and it is part of the bill, also—where we would have the ability to bring in part-time or retired Federal employees to help in this 1- or 2-year process for legalization, and waiving some of the normal Federal employment rules. The same with the ability to lease space, like in Chicago, where we could go out to a storefront site, lease it promptly, and not have to go through lengthy government procedures. Those provisions are in there, and we think those are good operational things to make it work better.

Senator SIMON. On the basis of your testimony 2 years ago, if we did not delay as much as this bill presently envisions, you could work with that?

Mr. NELSON. Yes, sir. We could certainly implement it.

Senator SIMON. Then finally, I notice on page 14 of your testimony, you say—and I quote:

> I suggest the addition of language to encourage voluntary efforts by employers to seek such assistance from the Service to screen illegal aliens from their workforce.

Can you tell me specifically what you had in mind. Let's just say I am running a restaurant, and somebody comes up to me, and I am not sure whether that person is legal or illegal.

Mr. NELSON. Right now, Senator Simon, many employers come to the Immigration Service—in some cases, they initiate it; in others, it is after we have initiated some enforement action—and say, "I do not want to hire illegals. What can you do to help me in that regard?" To the extent we can—and we do not have a lot of staff to be able to do it—we will and we have done it on numerous locations at different times, work with the employers, at their request under what we have called employer cooperation programs. It is entirely voluntary. They invite us to come in to review personnel records, interview employees that are working or to be hired, and advise them as to procedures— how they can go about to be sure they are not hiring illegal aliens. We can work very effectively together for mutual benefit.

So we think again that is the positive side, if you will, of the employer sanctions—like our traffic laws. Most people obey the traffic laws, and they work well. You have the police out there to enforce them for those who do not. Sanctions, I think, is somewhat parallel. The sanctions are there to enforce against those who do not comply. Most will want to comply, and the voluntary compliance efforts are along those lines.

Senator SIMON. But practically, for most employers, when you need an employee, you need an employee almost immediately, and whether it is working on the farm, or cleaning dishes in a restaurant, or whatever it may be. Is there some speedy kind of assistance that you can provide there?

Mr. NELSON. That is one of the purposes behind that suggested language. If that is authorized clearly, there are funds that we could use for that, that we would have more staff that would be availability you are absolutely right, is key to be able to give a fast and quick response.

Now, ideally—and we are a long way from that situation—but if you go to buy something with a credit card, they punch in your number and quickly come back as to whether your credit is all right—ideally, it would be nice to be able to do that for an employment situation. The employer calls in, "I have this person, and here is an alien number," or whatever, and we could punch it in and say, "Yes, that number is a valid number for that person, or not." That is sort of the system that we have in this entitlement fraud program that works very well in Illinois and several other States. But that is a ways off. Clearly, that is the thrust of this, is to rely as much as possible on voluntary compliance, on the employer's own initiative, and to be able to give him a speedy response.

Senator SIMON. When you say that is "a ways off," how far are we both in time and in dollars?

Mr. NELSON. Well, dollars is probably as big a problem as anything. We are now computerizing a great deal and have made dramatic strides in that area in the last few years. So we are getting close to the point where we could actually, physically, do it, but it is a very expensive proposition, obviously, to implement across the board. There was a lot of debate in the House on that last year, and I think a provision was put in for telephone verification. That is something I believe the Congress ought to look at, maybe more in terms of a pilot program.

Senator SIMON. But what kinds of dollars are we talking about?

Mr. NELSON. I do not have any exact figures, Senator. We can provide that to you. For a nationwide system, it would be very, very large.

Senator SIMON. I would be interested in two things—one, the kinds of dollars we are talking about; two what kind of a time factor are we talking about.

Mr. NELSON. We will be happy to provide that to you.

Senator SIMON. Thank you very much, Commissioner.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much, Paul.

One of the unique things which I do not even need to suggest to you is that we have found over the hearings in the past years with regard to the impact of illegal immigration and the specific points of heaviest influx, that certainly the Chicago area is one of the largest illegal immigration population centers and destination points, a final destination point. Is that not correct?

Mr. NELSON. Absolutely. The major cities—and Chicago is certainly one of the main magnets, and a lot of the flow does come from many areas. Not just Hispanics, but many other nationalities comprise the illegal population.

Senator SIMPSON. Is there any estimate? I know that that is impossible in all we do here.

Mr. NELSON. Again, I do not have a good figure on that. I would be happy to provide it, rather than speculate.

Senator SIMPSON. If you could, please. It is significant. I remember that. And a lot of mail comes to the subcommittee from that area, too.

Well, thank you, thank you very much, Commissioner Nelson. I appreciate having a current report from you.

Thank you.

[Following material was submitted:]

TELEPHONE VERIFICATION SYSTEM

There are a number of options regarding a telephone verification system ranging in cost from $28 million to $283 million over a 5 year period. The lowest option for $28 million consists of a 2 year prototype study and the system installed in one State.

ILLINOIS ILLEGALS

The Immigration Service does not have any firm figures on how many illegal aliens live in the Chicago area today. (The Census Bureau is now working on an estimate of illegals counted in the Chicago area.) We do know, based on Census estimates, that at least 135,000 illegal aliens resided in Illinois in 1980. It should be remembered, however, that the Census Bureau is not able to say how many illegal aliens were left out of the 1980 census.

When the Census counted 135,000 illegal aliens in Illinois, 61,000 of these individuals were found to have entered the United States between 1975 and 1980; 43,000 between 1970 and 1974; and 32,000, or nearly a quarter of the total, had been living in Illinois for ten years or more. Three quarters (101,000) of the illegal aliens counted in Illinois were from Mexico. The 135,000 individuals counted in Illinois represented 7 percent of the 2.1 million illegal aliens counted in the 1980 census.

We can use this same percentage (7%) today to compute the number of illegal aliens residing in Illinois based on estimates of the total illegal alien population. Using a range of 3.5 to 6 million illegal aliens—the most widely accepted estimates of the total illegal alien population—the number of illegal aliens now residing in Illinois would fall somewhere between 245,000 and 420,000. In summary, we can say that over a quarter of a million illegal aliens live in Illinois and that more than half of them are from Mexico.

Senator SIMPSON. And now, the final two panelists of the hearing today, Richard Keatinge, chairman of the coordinating committee on immigration law of the American Bar Association, and Ralph B. Evans, president of Evans Farm Inn, and a member of the labor relations committee of the U.S. Chamber of Commerce.

It is very nice to bave you here, both of you, and we look forward to having your testimony, and we appreciate your taking the time to share your views with us. You and I, Ralph, have shared thoughts. You have been most forthcoming in your observations and the groups and agencies you represent have a serious stake in immigration reform, and I know that.

So, let's go in the order of the agenda, and I believe that you have accompanying you, Ralph, Ginny Lamp, of the chamber, and it is good to have you here.

So, Mr. Keatinge, please, of the coordinating committee on immigration law. That must be a spirited group. I know many of the members, and it is a spirited group, isn't it?

Mr. **Keatinge**. That it is, Mr. Chairman.

Senator **Simpson**. Yes, indeed. I am very interested to hear what you would share with us on that.

STATEMENT OF A PANEL, INCLUDING: RICHARD H. KEATINGE, CHAIRMAN, COORDINATING COMMITTEE ON IMMIGRATION LAW, AMERICAN BAR ASSOCIATION; AND RALPH B. EVANS, PRESIDENT, EVANS FARM INN, AND MEMBER, LABOR RELATIONS COMMITTEE, U.S. CHAMBER OF COMMERCE, ACCOMPANIED BY VIRGINIA LAMP, LABOR RELATIONS ATTORNEY

Mr. **Keatinge**. Thank you, Mr. Chairman.

I appreciate the opportunity of appearing here today on behalf of the American Bar Association and in particular its coordinating committee on immigration law. I would ask that our prepared statement be placed in the record, and I would like to summarize the principal points which we think should be emphasized.

First, we would like to commend the chairman for stripping down the bill to what we consider the immediately essential elements of immigration reform. The legislation that was pending in the last Congress concerned us because it addressed so many different issues, including legal immigration, asylum and the proposed U.S. Immigration Board. These items have been removed, and we think it makes it possible to look at the essential problems of illegal immigration.

Second, we would also like to commend the chairman, the Immigration and Naturalization Service and the administration for allocating increased resources to the Immigration and Naturalization Service. We think that for any of these efforts to be successful, it is going to be necessary to increase enforcement of our existing laws and to appropriate additional funds to enforce any additional legislation that this Congress may pass. We think the substantial addition that has been made, and proposed, will be extremely helpful in this regard.

Third, it is with some of the other provisions of the legislation where we have some problems. As you know, Mr. Chairman, the American Bar Association has opposed including in past legislation any employer sanctions because we do not feel that a convincing case has been made that they will work and that they won't prompt discrimination. We were chastised about this view when we were here 2 years ago. We have heard your message that immigration reform will include sanctions. We have gone back to our committee, and we have considered this matter further.

We know that employer sanctions are going to be part of any bill that is passed by this Congress. They are an essential element, just as we feel legalization is an essential element.

We commend the chairman for removing criminal sanctions. We do not feel this is an area in which criminal sanctions are either needed or will be effective. We think that the civil sanctions that you have provided are balanced. We are particularly interested in the testimony this morning of the Immigration and Naturalization

Service with respect to voluntary compliance with the bill's prohibition on hiring undocumented workers. I happen to come from Los Angeles, where these problems are acute. And we think that if the Immigration and Naturalization Service will devote a substantial effort to encouraging voluntary compliance, the civil sanctions may not be necessary.

We are troubled still by the question of discrimination. We think that there is a necessity for some provisions protecting against discrimination as a result of employer sanctions. There are concerns expressed, and we think they are legitimate concerns, expressed by Hispanic groups and others—we have heard them in Los Angeles, and I am sure the Senator has heard them many times in this committee—that the sanction procedure will bring about discrimination against person of Hispanic origin, and others. We think this is a possibility, and we think it is one that should be prevented. We know that we cannot show that there will be discrimination under the proposals, but we do not think that this committee can show that there will not be. So therefore, we think that there needs to be at least some antidiscrimination language.

Finally, probably the greatest problem we have with the S. 1200 is its handling of legalization. The previous legislation provided for immediate legalization. This legislation provides for a trigger mechanism, which we do not think is practical. There is considerable question, I think, as to whether legalization would ever be accomplished under the legislation as it is proposed.

We think the position that was taken by the administration in the last Congress is the correct position. I would like to quote briefly from the testimony of William French Smith to this committee in 1983:

> Although some have criticized legalization as a reward for lawbreakers, it represents a practical decision that is consistent with effective law enforcement. The failure to include such a legalization program would aggravate enforcement of employer sanctions. It would leave in place those long-term illegal aliens who are most likely to resist removal from the United States by relying on the procedural safeguards and administrative relief available under existing law. This would divert important resources of the Immigration and Naturalization Service at precisely the time when its enforcement priority should be effective implementation of employer sanctions.

Mr. Chairman, we think that is a sound position. We think it was the correct position then, and we think it is the correct position now. And we think that bona-fide, contemporaneous legalization provisions should be added to this bill. Such a program should go into effect at a fixed date, rather than leaving it entirely to the whims, if I may put it that way, of a commission. It should have a cutoff date—assuming enactment no earlier than 1986—of January 1983. It should be geared to accomplish, as the Select Commission so correctly urged, as extensive a program of legalization as possible.

That, I think, Mr. Chairman, summarizes our basic views with respect to this legislation.

Senator SIMPSON. Thank you very much, Mr. Keatinge.

[Statement follows:]

PREPARED STATEMENT OF RICHARD H. KEATINGE

Chairman Simpson and Members of the Subcommittee:

My name is Richard H. Keatinge and I am a lawyer in private practice in Los Angeles. I have the honor to chair the American Bar Association's Coordinating Committee on Immigration Law and also serve as the delegate of the ABA's Section of Administrative Law to our policy-making House of Delegates. I very much appreciate your courtesy, Mr. Chairman, and that of Mr. Day in so helpfully arranging for my appearance. It is an honor to join such distinguished company in helping to fashion needed immigration reforms, doubly so for me because I am here as the representative of the President of the American Bar Association.

The American Bar Association long has been involved in reviewing substantive immigration laws and the procedures by which they are enforced and in making recommendations for their improvement. This involvement began particularly in 1949 and continues to this date. When our House of Delegates approved a package of recommendations relating to S.529 in February, 1983 the House also established the Coordinating Committee I now chair. The committee is composed of two representatives each of the Sections of Administrative Law, Criminal Justice, General Practice, Individual Rights and Responsibilities and International Law and Practice and one representative from the American Immigration Lawyers Association. The charge to this broad-based group was to coordinate the varied and often competing interests within the Association in an effort to implement the Association's adopted policies through the enactment of needed immigration reforms.

This diversity has resulted in vigorous debate and the expression over the past two years of strong opinions within the Coordinating Committee. However, its composition and our internal differences have proven to be a strength. As is the case with this subcommittee, and for that matter the Congress and the earlier Select Commission, consideration of an issue so grounded in emotional and social concerns as it is with legal questions, requires a broad perspective to result in sound reforms. Throughout our deliberations and our efforts to fashion the dozens of ABA policies into a cohesive approach to immigration reform the Association's single guiding principle has been, in its broadest sense, the determination of policies which are in the best national interest of the United States.

Two years ago my distinguished colleague on the Coordinating Committee, David Carliner, appeared before this subcommittee to outline the Association's policies concerning then-pending legislation. Those policies have not changed. Happily, however, your legislation has, and I would like to generally commend your refashioning of your legislation, now S.1200, to focus almost exclusively on questions concerning illegal immigration. There are, of course, other areas of reform which you as well as the ABA have favored, but the experience of the last four years has taught us all, I think, that the road to thoughtful and needed reform is a relatively narrow one, and a lighter legislative load is likely to experience a safer journey.

The legal profession has a special responsibility to improve the current immigration laws and processes. Lawyers make the laws, enforce the laws, defend those accused of violating the laws and judge cases concerning those laws. Because of this involvement it is not unfair to suggest that lawyers also bear some responsibility when those laws need improvement. Thus, while I am here today to reiterate in the strongest possible terms the commitment of the American Bar Association to promptly enact reforms we think are needed, it is perhaps more important to assure that our deliberations result in laws that are in fact enforceable, which will be enforced and which are fair and generally are perceived to be fair. The very existence in this country today of untold millions of undocumented or otherwise illegal immigrants is testament to the failure of some or all of the standards of enforceability, enforcement and fairness. Were it not so, I suspect none of us would be here today.

II. The Elements of Needed Immigration Reform

As I noted, Mr. Chairman, the deletion from last year's bill of a number of provisions which the ABA favored or opposed has, we think, helped make S.1200 a more focused bill. Some of these provisions are, in our view, elements of needed reform, and their omission from S.1200 should not be viewed as lessening their importance.

Thus, the ABA expressed the strong view over the past two years -- a view still held -- that improvements in the immigration system even without legalization and employer sanctions, and most certainly with those two major additions, require the decisional independence of administrative law judges. We supported your call last Congress for the establishment of a United States Immigration Board, but we differed with you when we emphasized the importance of administrative law judges being independent from the Attorney General and having the decisional independence requisite to fair fact-finding and dispute resolution. Our support for an independent United States Immigration Board takes on even greater force if the current system is further burdened with disputes concerning employer sanctions and legalization. However, the deletion of the United States Immigration Board from S.1200 undoubtedly causes one less area of disagreement among all parties to the search for reform. We would urge that legislation establishing a fully independent United States Immigration Board, however, be high on the agenda of items to be considered following S.1200.

On the other side of the coin the American Bar Association had great difficulty with a number of the asylum adjudication provisions included in your prior legislation. Similarly, the removal of those provisions from S.1200 will likely remove stumbling blocks as it will permit all of us to more carefully review our nation's standards for admission of refugees and the manner in which we seek to comply with our international obligations on the subject.

The important but very difficult question of legal immigration generally is not addressed in S.1200. The ABA looks forward to working with you on the various questions associated with legal immigration at a future date. In passing, however, I commend the inclusion in Section III of S.1200 of the proposed pilot visa waiver program which we hope will generate the kind of information necessary to implement a full visa waiver program.

In addition, we note the appropriateness of the first section of S.1200 being devoted to authorizing additional sums of money through 1988 for increasing the strength and professionalism of the border patrol and for other enforcement activities in the Department of Labor and the Equal Employment Opportunity Commission. To return to my opening theme, even if legislation is fashioned which is enforceable and fair, it will do little unless it is, in fact, enforced. The American Bar Association commends these efforts and, particularly during a time of national budgetary restraint, will continue to support the efforts of the Chairman in obtaining the needed resources for the enforcement of our immigration laws.

The two final elements of S.1200 -- employer sanctions and legalization -- are of course the hallmarks of this legislation and the most controversial and difficult provisions we are addressing. The balance of this testimony will focus individually on employer sanctions and legalization as well as their relationship in the overall scheme of S.1200.

III. Employer Sanctions

The American Bar Association opposes the imposition of penalties on employers who knowingly hire immigrants illegally in the country or lawful immigrants not authorized to work. Since this proposal first was approved by the House of Representatives and, in slightly different forms approved by both houses on a number of subsequent occasions, a number of concerns have persisted.

The ABA continues of the view that the burden of proof is on the proponents of such significant changes in our employment laws and practices. We think the proponents of sanctions have failed to demonstrate that sanctions will act as an effective mechanism to curtail illegal immigration into the United States, that the implementation and enforcement of sanctions by employers and by the federal government will not result in discrimination against U.S. citizens or lawful immigrants authorized to work, and that the burden and costs on the private sector of implementing a program of sanctions will not be disproportional to their effect.

The burden is not on the opponents of sanctions to demonstrate the likely consequences of as-yet unenacted provisions. It is, I reiterate, a burden necessarily borne by the proponents.

The questions we and other opponents of sanctions have raised are not trivial. Although we continue to disagree, we commend you, Mr. Chairman, for your attention over the years to these difficult questions. As Father Theodore M. Hesburgh said in his supplemental statement to the 1981 final report of the Select Commission on Immigration and Refugee Policy, "The essential question is how to make such a law work without having it discriminate against minority groups, disrupting the work place or placing too great a burden on employers and eligible employees."

In truth, Mr. Chairman, the opponents of employer sanctions are just as unable to definitively prove that employer sanctions will result in all of the ill-effects we fear just as the proponents of sanctions are unable to definitively demonstrate that such sanctions will accomplish all of their stated goals without any ill-effects. Such is our predicament. Thus, it appears to be the responsibility of us all to fashion an overall revision to the immigration laws which the best evidence suggests will accomplish certain ends.

By the same token, any perceived or likely ill-effects, especially where they concern discrimination against American citizens in the workplace, must be protected against even if such feared results never occur. Not unlike being immunized against measles, a patient need not be guaranteed by the doctor that measles will result in the absence of immunization -- most of us only need to know that immunization will almost surely protect us if we are exposed to the disease. So anti-discrimination protections are essential to this bill if only to protect against a result we all hope will never occur.

Two years ago Mr. Chairman, in response to the testimony of the ABA on this subject, you noted that, "lawyers that I knew used to be pretty smart politically and I am just kind of laying out to you, you know, what has happened around this joint [on the subject of employer sanctions] for the last ten years based upon roll call votes." You continued to observe that, "...it is certainly a curious kind of an experience to see that there is a political reality...[and] I always believed that lawyers paid attention kind of to the things like that".

Mr. Chairman, we do try to listen and we continue to review our own analysis of the pending legislation and the need for immigration reform. We have accepted as a political fact the statement you have made once if you have made it a thousand times - that there will be no legalization program without sanctions and that there will be no sanctions without legalization. We concur in that judgment. But, as discussed below, S.1200 has broken that link by essentially deleting legalization and substituting a set of preconditions which, objectively, will be enormously difficult to meet.

As a practical necessity S.1200, if approved by Congress, will include employer sanctions and it will include a legalization program. We do not contest that fact and we will not oppose the inclusion in the legislation of sanctions. However, based on the continuing concerns of the ABA, we do urge you to give serious consideration to making adjustments to the provisions in Section 121 of your bill in line with the improvements you have already instituted.

First, the ABA commends your deletion of criminal sanctions. Whatever one's view of employer sanctions it has always seemed to the ABA that the establishment of penal sanctions was simply an excessive response to the alleged violation. As has been demonstrated in other criminal laws, if judges and juries think that the penalty for the commission of a certain crime is excessive they are more likely than not to find the accused innocent. If the accused is in fact guilty of the offense this process can do nothing but to foster disrespect and disregard for the law. Thus, removal of criminal sanctions is a signal improvement.

If employer sanctions are crafted in such a way as to be enforceable and if they are implemented in such a way so that they are in fact enforced, they will have only partially met their purpose if they are unfair and discriminatory to various minority workers. Section 402 of S.1200 is, unfortunately, a wholly inadequate response to the concern of many observers that the imposition of sanctions will in fact foster discrimination against foreign-appearing workers in excess of the discrimination against such persons now. It is this perception of unfairness, if not its fact, that undoubtedly had an impact on the ultimate failure of the 98th Congress to pass legislation. For a series of government agencies to monitor sanctions and to report to Congress if sanctions appear to be discriminating and, thereafter, to hope Congress responds, is political wishful thinking. As controversial as anti-discrimination language is, to some involved in the immigration debate it, like other controversial provisions, must be enacted as part of this package, and not, if the system fails, at some future date -- if at all.

The American Bar Association disagrees with assertions that strong and definitive anti-discrimination language would necessarily require U.S. employers to hire non-citizen workers over citizens. We would not support such an approach. What we do support is a clear, unequivocal prohibition against employment discrimination backed by the enforcement of the executive branch of government. For persons lawfully in the United States whom the government has authorized to work, the fact of their U.S. citizenship or lack of U.S. citizenship should be an irrelevancy in the hiring process. The mechanism must be instituted to authorize the federal government to prosecute discriminatory employers who, for instance, establish a pattern or practice of hiring only U.S. citizens to the knowing exclusion of non-citizens as well as employers who have a pattern or practice of hiring only authorized but non-citizen workers to the exclusion of citizens. The concern about discrimination has been before the Congress at least since the 1981 report, and specific formulations have been debated by both houses of Congress. It must not be deferred to the whims of yet another government study.

It is the law, confirmed in numerous U.S. Supreme Court decisions, that with specific exceptions states may not accord different rights and privileges to non-citizens than are accorded to citizens. Some distinctions have been upheld and others have not. It seems to us that the national government should not follow a different standard than that followed by the states. If authorized immigrants must be available to serve in our armed forces, then our national policy should be that those same persons may not be denied other employment because of their status.

It has been suggested that the experience by France and other European countries has not demonstrated that the existence of sanctions promotes or even induces discriminatory hiring practices. This may be correct. However, none of those countries, of course, experience such a large amount of illegal immigration, both in terms of numbers and as a percentage of all illegal immigration from a neighboring country sharing a common border as the United States does with the Republic of Mexico. Nor do any of those countries have such a substantial population of citizens whose origins were in the country responsible for such illegal immigration as the United States does with its citizens of Hispanic origin. These are important considerations suggesting caution in comparing the experience elsewhere with what might happen here.

The ABA's House of Delegates has not specifically addressed the various anti-discrimination proposals which have been advocated. The Coordinating Group which I chair, however, was directed by our policy makers to oppose employer sanctions because of their discriminatory potential. Thus, we favor proposals to discourage such discrimination initially and, if it occurs, to make it grounds for prosecution. The ABA understands the difficult dilemma faced by the subcommittee in considering anti-discrimination language which theoretically could have results beyond those intended to forestall discriminatory hiring practices. Consequently, Mr. Chairman, the ABA Coordinating Committee pledges to work with you and others concerned about potential discrimination in an effort to fashion in legislative language the clear policy of the Government of the United States that hiring discrimination against persons authorized to work will not be tolerated.

Should employer sanctions, if enacted, ultimately result in no discrimination, then the American Bar Association will be the first to express its relief. But if such sanctions should result in any significant discrimination which can in fact be tied to the existence of sanctions, then the failure of this legislation to include adequate machinery to deal with that discrimination will be a serious undercutting of the future effect of sanctions. There is no reason to avoid instituting anti-discrimination machinery if one is convinced it will never be needed. There is every reason to insist on the inclusion of such provisions if it is possible that they might become necessary.

Finally, Mr. Chairman, all of the issues you have so commendably tackled over the years concerning employer sanctions will, in large measure, not be fully understood until such sanctions are enacted. Because the debate surrounding immigration reform is so difficult -- as you know better than anyone -- any problems that might result from this legislation will undoubtedly be difficult to rectify because of the understandable reluctance of Congress to again enter this fray. Thus, the American Bar Association strongly encourages you to seriously consider including a simple sunset review requirement as part of S. 1200. The purpose of such a requirement is to force Congress and the public to fully review the experience with sanctions. Only if we are all forced to return to this table in, for instance, five years will the experiment with sanctions be worthy of your effort. We can think of no objective reasons not to include such a sunset provision -- if sanctions are demonstrated as limiting the influx of illegal immigrants and are not discriminating against persons authorized to work in the United States, there will most certainly be no interest or incentive to do anything but continue sanctions. If sanctions are not meeting their promise and are being implemented with a discriminatory result -- or if they merely need some mid-course fine tuning -- then it would be difficult to imagine anybody who would oppose such a legislative change. In all events, a law as controversial as sanctions must be revisited periodically and with close scrutiny and we all must be forced to do it.

IV. Legalization

As noted, the American Bar Association has recognized the practical necessity of enacting legalization and sanctions as part of an unbreakable package. It is, thus, particularly disheartening after all of the work of recent years to view the legalization provisions in Title II of S.1200 as a regression from prior years. Mr. Chairman, you cannot be commended enough since the issuance of the Select Commission report for your tireless efforts to educate your colleagues and the American public on issues which many of us would just as soon ignore. Because of your moral leadership -- and your clear success in expanding congressional understanding of the realities of immigration reform -- the ABA respectfully urges you to return to the wisdom of joining legalization and sanctions, and not having the former somehow contingent on the latter.

We acknowledge your personal views on the subject are reflected in S. 1200. However, those views differ from the final recommendation of the Select Commission's decision, in which you joined. The commission correctly concluded, in our view, that strengthening enforcement measures against illegal immigration, so as to decrease the number of illegal immigrants entering the United States, is a necessary adjunct to legalizing a substantial percentage of those unauthorized immigrants now in the United States. However, the provisions in S. 1200 do not guarantee that there will ever be a legalization program and make the establishment of such a program so contingent on such vague standards that we are not now able to determine what such a program might accomplish.

We urge, simply, a return to the concurrent enactment of a legalization program and sanctions which has already garnered a majority in Congress.

As an advocate of legalization you know better than most the benefit of legalization and the importance of instituting such a program. The benefits to our nation are best understood by reviewing the alternatives to immediate legalization. First, even in the absence of employer sanctions there is nothing to suggest, and we have heard no testimony that does suggest, that the resources of the United States government are capable of even identifying the untold millions of undocumented immigrants in the United States, much less prosecuting and deporting them. It comes as close as anything to being an impossible task, and you and the Select Commission and the ABA and most other observers recognize this. Even if it were possible, such a massive attempt at deportation would, as the Select Commission noted, "be destructive of U.S. liberties, costly, likely to be challenged in the courts and, in the end, ineffective." The report observed that if such a deportation campaign as was undertaken in the mid 1950's were repeated, "such an effort would not be tolerated today and . . . would almost certainly violate the rights of many legal residents without reaching more than a small proportion of those aliens lacking proper documentation."

Second, if the United States is unwilling or unable to enforce the law against the millions of undocumented immigrants now in the country, is it a satisfactory solution simply to do nothing? Again to quote from the final report of the Select Commission, "the existence of a large undocumented/illegal migrant population should not be tolerated. The cost to society of permitting a large group of persons to live in illegal, second class status is enormous. Society is harmed every time an undocumented alien is afraid to testify as a witness in a legal proceeding (which occurs even when he/she is the victim), to report an illness that may constitute a public health hazard and to disclose a violation of U.S. labor laws."

If the status quo is unacceptable and if the law is unenforceable, then it seems to the American Bar Association as it has to those more knowledgeable, such as the Chairman, that legalization enacted at the same time enforcement is strengthened is the only possible response, the only humane response and the response best serving our collective national interests.

To reiterate our past expression of a legalization program, it is the ABA's view that the national interest is best served -- and the basis for increased enforcement best established -- if the slate is wiped clean for a substantial number of currently undocumented immigrants.

Such a program would, as Father Hesburgh has observed, have a cut-off date about three years prior to the date legalization is instituted. A one-year program would provide sufficient time for church and community organizations and bar associations to assist the INS to assure the undocumented population of the government's intention to offer legalization to as many as possible. It would also make clear that the program would not be renewed. A single-tier program would be less costly for the government to implement. To minimize both fraud by applicants and unauthorized decisions by government officials, some minimum reviewability of denials of legalization should be instituted. The definition of continuous residence, and exceptions thereto, the degree of Justice Department discretion in fashioning regulations and, perhaps, the role of the Community Relations Service in implementing sanctions, all are issues the ABA is reviewing. We will be pleased to work with you to resolve these questions.

I conclude where I began, Chairman Simpson, by commending you among other things for sticking to this difficult and often uncomfortable task you have assigned yourself. The revised version of your bill before us today is, as indicated, preferable than prior versions because of its more limited focus. The observations and suggestions we have offered are the result of continuing efforts on the Association's part to be a constructive participant in the process of improving our nation's immigration laws. In particular, as you might imagine, the practical necessity of acknowledging that sanctions will be part of any legislation is difficult for us to admit, but we have done so. Conversely, we would urge your continued attention, Mr. Chairman, to those aspects of S.1200 on which we have commented.

Senator SIMPSON. Mr. Evans, please.

Mr. EVANS. Thank you, Senator Simpson.

I would like to ask permission that my entire statement be made a part of the record.

Senator SIMPSON. Without objection, so ordered.

Mr. EVANS. And I would like to change the date to today's date; it had the 14th on it.

Senator SIMPSON. We will change the date, too.

Mr. EVANS. I am Ralph B. Evans, president of Evans Farm Inn in McLean, VA, and a member of the Labor Relations Council of the U.S. Chamber of Commerce. I am also a board member of the National Restaurant Association. And, as you recognized earlier, Virginia Lamp, with the chamber, is with me, a labor relations attorney.

On behalf of this Nation's largest business federation and the National Restaurant Association, I am particularly pleased to come before this subcommittee, and my good friend, and its distinguished chairman, Al Simpson, to testify on the issues of immigration reform as embodied in S. 1200, the Immigration Reform and Control Act of 1985.

Let me take this opportunity to thank you, Mr. Chairman, for allowing the chamber the opportunity to testify on this important piece of legislation. I would also like to add that the National Restaurant Association, which represents the food service industry in this country, the largest single employer of minorities, is in full accord with the chamber's views on S. 1200.

The interest of employers in the immigration issue is diverse. It might be said that no single business perspective exists on this issue since much depends on the individual employer's business, the company's physical location, and the kind of workers that business employs.

Nevertheless, business men and women have, as do all Americans, a common interest in the short-term and long-term implications of borders which are hemorrhaging.

Although we believe that the United States has not lost its capacity to absorb increasing numbers of immigrants, and that we benefit from their presence, the U.S. Chamber recognizes that the time for effective immigration reform has arrived. The massive influx of both legal and illegal immigrants which our Nation is experiencing must be addressed effectively by Congress and this administration. Our Nation's ability to control its demographic future is key to retaining the economic and political liberties which we value.

The short-term as well as the long-term costs of our currently permeable borders are great. These costs are social, economic, political, environmental, and cultural. The need for clear, rational and effective immigration reform is apparent to most Americans, particularly to those Americans who live in the border States and the cities where this problem is real and pressing.

As you are aware, the U.S. Chamber would have preferred a bill without an employer sanction provision. We recommend and remain committed to an immigration reform vehicle which effectively would stem the flow of unwanted immigration, without opening up the range of issues, such as methods of enforcement and potential discrimination, resulting from such a provision.

On the other hand, Congress appears determined to make employer sanctions the centerpiece of immigration reform. Section 121 of S. 1200 would, for the first time, make it unlawful for employers, union hiring halls and others, to hire, recruit or refer an undocumented alien. This bill in particular, and its revised employer sanctions provision, represents a bold and improved approach to this pressing national problem. While this bill is not perfect, from the chamber's perspective, it is a tough, fair, political initiative which deserves high commendation.

Some of the history and background of the chamber's position. It was never intended to justify or protect those employers who intentionally hire illegal aliens and take unfair advantage of their status. Rather, it has been to prevent legislation which would do two unnecessary things. First the chamber opposed previous immigration reform bills requiring all employers to comply with overly burdensome recordkeeping and verification requirements whereby fines could be imposed for just mere paperwork violations; and second, we oppose immigration bills with provisions creating new private rights of actions for discrimination based on alienage. Our principal concern has been to try to target enforcement toward those employers who intentionally hire undocumented workers and to impose strict penalties, as needed.

At the same time, we sought to minimize the burden on the vast majority of well-meaning employers, who want to do their part to help solve the illegal immigration problem but who have little contact with undocumented workers.

S. 1200 represents a carefully drafted compromise that addresses these concerns. Thus, despite having been a long-term opponent of previous immigration reform bills, we are happy to tell you we are with you on this one and are in support of S. 1200.

The practical effects of the new employer sanctions, as we see it, are: (1) a strong incentive to comply voluntarily. This legislation would, for the first time, make it illegal under Federal law to hire knowingly undocumented workers. However, it provides employers with an affirmative defense when they voluntarily choose to comply. By removing mandatory paperwork and recordkeeping requirements, S. 1200 eliminates the potential for technical fines being imposed on well-meaning employers who hire U.S. citizens but who fail to keep records. If the employer voluntarily fails to keep the records and later is found to have hired illegal aliens, S. 1200 establishes a legal presumption that the employer knowingly hired these illegal aliens.

We think that the vast majority of employers will want to comply with the new verification system, not only to help achieve immigration reform, but also to avoid the substantial presumption which would be invoked against those employers who do fail to keep records and who are later found to have hired undocumented aliens.

Other areas of significant concern that we have in the chamber are that we feel the undocumented worker, and not the business, should bear additional responsibilities. The Congress has been quick to impose added responsibilities for the business community in the enforcement of immigration laws, but to bear the sole burden is inequitable and less effective than other possible approaches, because undocumented workers are lawbreakers, yet the penalties in S. 1200 apply only to the employer, who knowingly or unknowingly hires an individual who wants to work, yet is later discovered to be an illegal alien.

The sanctions have been provided to discourage employers from hiring illegal aliens. Unfortunately, the bill contains no similar deterrent or penalty for the undocumented worker.

The reason people of all nations flock to our shores is America is the freest nation in the world, and here, true opportunity for advancement does exist. That is not true in many other nations, where high taxes, overregulation, oversized government, and lack of personal freedoms have smothered the possibilities for advancement and self-betterment of their people. In the long run, convincing these other nations in Latin America and elsewhere to free up their economies and to respect private property rights and the free enterprise system will be much more effective in slowing immigration than any fence along the Rio Grande or any regulation can do.

The antidiscrimination riders to immigration reform is another concern. If there is one single aspect of this immigration debate which can galvanize and activate the business community—small and large employers alike—it is the addition of any new, substantive antidiscrimination riders to this bill. Again, Senator Simpson, let me commend you for opting not to incorporate such controversial provisions in your 1985 immigration reform bill.

The rights of enforcement were mentioned earlier, and we have some concerns about that. Individuals and entities within certain stipulated statutory limits and within certain unknown limits that will be determined by the Attorney General, are given authority to initiate investigations of employers who are suspected of hiring illegal aliens. We feel this could raise substantial concerns in the business community if appropriate limitations are not placed on these rights. Assurance has to be incorporated so that this section of the bill is not misused for other than immigration-related purposes. Unless effectively limited, such authority could create an army of harrassers. And although important safeguards are built into S. 1200 to forestall such misuse of this provision, we think additional clarification in this area is needed.

In summary, S. 1200 represents a reasonably sound, practical attempt to draft a piece of legislation to clarify our national objectives and control our borders, and to provide an effective method by which all Americans, including the business community, can contribute to the solutions for our immigration problems.

Although the chamber primarily has been interested in the employer sanctions provisions of immigration reform efforts, we have also reviewed the other components of S. 1200. We find the entire package to be vastly improved over previous immigration reforms packages, and while not perfect, to be a compromise worthy of our support.

Again, Senator Simpson, you are to be commended for your sincere effort to find an effective solution to our problem, and we will continue to work with you to achieve reasonable immigration reform bills in the Senate, as well as with those House Members who are considering alternative approaches to immigration reform.

I thank you.

[Prepared statement follows:]

PREPARED STATEMENT OF RALPH B. EVANS

I. INTRODUCTION

I am Ralph B. Evans, President of Evans Farm Inn in McLean, Virginia and a member of the Labor Relations Council of the U.S. Chamber of Commerce. Accompanying me today is Virginia B. Lamp, Labor Relations Attorney. On behalf of this nation's largest business federation, I particularly am pleased to come before this Subcommittee and my good friend, its distinguished Chairman, Senator Simpson, to testify on the issue of immigration reform as embodied in S. 1200, The Immigration Reform and Control Act of 1985. Let me take this opportunity to thank you, Mr. Chairman, for allowing the Chamber the opportunity to testify on this important piece of legislation.

The interest of employers in the immigration issue is diverse. It might be said that no single business perspective exists on this issue since much depends on the individual employer's business, the company's physical location and the kinds of workers the business employs.

Nevertheless, business men and women have -- as do all Americans -- a common interest in the short-term and long-term implications of borders which are hemorrhaging.

II. IMPORTANCE OF IMMIGRATION REFORM

Although we believe that the United States has not lost its capacity to absorb increasing numbers of immigrants and that we benefit from their presence, the U.S. Chamber recognizes that the time for effective immigration reform has arrived. The massive influx of both legal and illegal immigrants which our nation is experiencing must be addressed effectively by Congress and this Administration. Our nation's ability to control its demographic future is key to retaining the economic and political liberties which we value. The short-term, as well as the long-term, costs of our currently permeable borders are great. These costs are social, economic, political, environmental and cultural. The need for clear, rational and effective immigration reform is apparent to most Americans, particularly to those Americans who live in those border states where the problem is both real and pressing.

As you are aware, the U.S. Chamber would have preferred a bill without an employer sanctions provision. We recommended and remain committed to an immigration reform vehicle which effectively would stem the flow of unwanted immigration, without opening up the range of issues (such as methods of enforcement and potential discrimination) resulting from such a provision.

On the other hand, Congress appears determined to make employer sanctions the centerpiece of immigration reform. Section 121 of S. 1200, would for the first time, make it unlawful for employers, union hiring halls and others to hire, recruit or refer an undocumented alien. This bill in particular, and its revised employer sanctions provision, represents a bold and improved approach to this pressing national problem. While this bill is not perfect from the Chamber's perspective, it is a tough, fair, political initiative which deserves high commendation.

III. HISTORY/BACKGROUND OF U.S. CHAMBER'S POSITION

The Chamber's position on immigration policy was never intended to justify or protect those employers who intentionally hire illegal aliens and take unfair advantage of their status. Rather, it has been to prevent legislation which would do two unnecessary things.

First, the Chamber opposed previous immigration reform bills requiring all employers to comply with overly-burdensome recordkeeping and verification requirements (whereby fines could be imposed for mere paperwork violations). We felt the mandatory verification procedures would have imposed an unnecessary burden on the vast majority of good-faith employers -- particularly small businesses -- who do not hire illegal aliens. The effect of such mandatory requirements would have been to penalize the innocent employer rather than the intentional violator. Mandatory paperwork schemes promoted a "guilty until proven innocent" bias against the business community which the Chamber believed to be unjustified.

The optional paperwork scheme in S. 1200, places the focus on providing incentives for voluntary compliance.

Second, we opposed immigration bills with provisions creating a new private right of action for discrimination based on alienage.

Our principle concern has been to try to target enforcement toward those employers who intentionally hire undocumented workers and to impose strict penalties as needed. At the same time, we sought to minimize the burden on the vast majority of well-meaning employers who want to do their part to help solve the illegal immigration problem but who have little contact with undocumented workers.

S. 1200 represents a carefully drafted compromise that addresses these concerns. Thus, despite having been a long-time opponent of previous immigration reform bills, we are pleased to support S. 1200. We look forward to working with you as the legislation evolves, Mr. Chairman.

IV. REASONS FOR THE CHAMBER'S NEW POSITION

More than 90 percent of the Chamber's members have fewer than 100 employees. For that reason, we particularly have been sensitive to the potential burdensome impact of the various reform proposals on small business owners. This bill effectively addresses our most fundamental objections to previous employer sanctions provisions. Although S. 1200 may not be the perfect solution to some of the problems which our members have, it is a reasonable, good-faith compromise. The following five elements of S. 1200 were important in reaching this decision:

1. Optional recordkeeping and verification requirements (no penalties for paperwork violations);
2. No private right of action creating new rights and/or a new protected class based on alienage (such as the House-passed "Frank Amendment" of 1984);
3. A warning period prior to issuance of any sanctions to allow employers an opportunity to become accustomed to the new system;
4. Substantial safeguards to protect against abuse of the compliance and investigatory procedure to enforce the employer sanctions; and,
5. An affirmative defense against charges of knowingly hiring illegal aliens for employers who voluntarily comply with the relatively simple verification procedures.

V. PRACTICAL EFFECTS OF THE NEW EMPLOYER SANCTIONS PROVISIONS IN S. 1200

A. A Strong Incentive To Comply Voluntarily

This legislation would, for the first time, make it illegal under federal law to hire knowingly undocumented workers. However, S. 1200 provides employers with an affirmative defense when they voluntarily choose to comply. By removing mandatory paperwork and recordkeeping requirements, S. 1200 eliminates the potential for technical fines being imposed on well-meaning employers who hire U.S. citizens but who fail to keep records. If the employer voluntarily fails to keep the records and later is found to have hired illegal aliens, S. 1200 establishes a legal presumption that the employer "knowingly" hired those illegal aliens.

We believe that the vast majority of employers will want to comply with the new verification system, not only to help achieve immigration reform but also to avoid the substantial presumption which would be invoked against those employers who fail to keep records and who are later found to have hired undocumented aliens unknowingly.

B. Safeguards Against Discrimination Have Been Incorporated Specifically Into S. 1200

Although we do not believe that discrimination likely will result from this bill, S. 1200 contains specific and important protections if some pattern of discrimination begins to develop.

Section 402 requires the General Accounting Office (GAO) to review and to report to Congress on any pattern of discrimination developing subsequent to enactment of the bill. S. 1200 gives GAO the authority to suggest specific remedies to Congress, and the appropriate congressional committees must hold hearings on these GAO reports.

In addition, an important task force would be created under Section 402(c) to include representatives of the U.S. Attorney General, the Chairman of the U.S. Commission on Civil Rights, and the Chairman of the Equal Employment Opportunity Commission. This task force, working with Congress, should be an effective means by which to identify and remedy any discrimination which may result from the new employer sanctions provisions.

VI. OTHER AREAS OF SIGNIFICANT CONCERN TO THE CHAMBER

A. Undocumented Workers, Not Business, Should Bear Additional Responsibilities

Congress has been quick to propose added responsibilities for the business community in the enforcement of immigration laws. To bear the sole burden is inequitable and less effective than other possible approaches. Undocumented aliens are law breakers, yet the penalties in S. 1200 apply exclusively to an employer who, knowingly or unknowingly, hires an individual who wants to work, yet is later discovered to be an illegal alien. Sacntions have been provided to discourage employers from hiring illegal aliens. Unfortunately, the bill contains no similar deterrent or penalty for the undocumented worker.

Employment opportunities play a significant role in attracting illegal immigrants to the United States. Most illegal aliens are young male adults, which seems to indicate that most illegal immigrants are persons who seek employment. To this extent, the employer sanctions provisions in S. 1200 are one way to reduce the "pull" provided by our economic system.

Another way to reduce that "pull" is to take a more international and visionary perspective toward the issue of immigration reform.

The reason people of all nations flock to our shores is that America is the freest nation in the world. Here, true opportunity for advancement exists. That is not true in many other nations where high taxes, overregulation, oversized governments and lack of personal freedoms have smothered the possibilities for advancement and self-betterment of their people. In the long run, convincing the nations of Latin America and elsewhere to free up their economies, respect private property rights, and sell inefficient government-owned companies will do more to slow immigration than any fence along the Rio Grande or any regulation of American hiring practices.

To this end the Administration proposed and Congress passed funding for the National Endowment for Democracy. The Center for International Private

Enterprise, funded by NED, works to promote free markets and strong business climates in nations throughout the world. It explains the simple truth that low taxes, less regulation and a free economy are the route to growth and opportunity.

Therefore, the potential for aliens to receive economic, social, political and other benefits is a significant "pull factor" too, yet it goes largely unaddressed by S. 1200. We believe that the penalties and responsibilities of breaking immigration laws should be shared by the undocumented, knowing violator of our nation's existing immigration laws. After all, what we need is an immigration policy which establishes a sufficient level of control -- while maintaining maximum economic and political liberty -- so as to deter would-be violators of the immigration law. Deterrence measures can be targeted at the business community but also must be targeted at the principal law breaker involved -- the undocumented worker.

Further, we need to provide better support and funding for those agencies responsible for policing our borders.

B. Overcoming The Presumption Embodied in S. 1200

S. 1200 creates a substantial presumption that would apply to an employer who (for whatever reason) fails to meet the recordkeeping and verification requirements and who later is found to have hired undocumented workers. Specifically, Section 274A(3)(B) establishes a "presumption" that the employer hired such workers "knowingly." This presumption can be rebutted only by "clear and convincing evidence which contradicts the presumption" (Section 274(A)(3)(D). The Chamber is interested in receiving examples of the sorts of evidence an employer can offer to rebut this presumption.

Undoubtedly, the incentive to comply voluntarily with the verification requirements is great. In fact, based on the inherent difficulties of overcoming a legal presumption of any degree, the Chamber would encourage all employers to comply voluntarily with the additional responsibilities inherent in these employer sanctions provisions once enacted. Nevertheless, we think it important to recognize that failure to maintain the records and verify the status of workers should not automatically equate with "knowingly" hiring illegal aliens.

C. Rights of Enforcement

In Section 274A(d) of S. 1200, individuals and entities -- within certain stipulated, statutory limits in S. 1200 and within certain unknown limits to be determined by the Attorney General through regulation -- are given authority to initiate investigations of employers suspected of hiring illegal aliens. Potentially, this could raise substantial concerns for the business community if appropriate limitations were not placed on such new rights. Assurances must be incorporated so that this Section of the bill is not misused for purposes other than immigration-related purposes. In other words, unless effectively limited, such authority could create an "army of harassers" (who do not have reasonable cause to believe undocumented workers have been hired by an employer). These persons could harass particular employers or particular industries simply by filing complaints even though they did not have a substantial likelihood of prevailing. In the hands of competitors, unions, or ex-employees seeking retribution, such a provision could cause serious problems for employers.

Although important safeguards are built into S. 1200 to forestall such misuse of this provision, additional clarification is needed so Congressional intent is not misinterpreted subsequent to enactment.

D. Anti-Discrimination "Riders" to Immigration Reform

If there is one single aspect of the immigration debate which can galvanize and activate the business community -- small and large employers alike -- it is the addition of any new, substantive anti-discrimination "riders" to immigration reform. Again, Senator Simpson, let me commend you for opting not to incorporate such controversial provisions into your 1985 immigration reform bill.

During last year's House debate on immigration reform, an amendment, by Rep. Barney Frank, was offered that would have created an entirely new enforcement scheme for claims of alienage as well as national origin discrimination. The Frank Amendment would have:

- created a special counsel within the Justice Department to pursue such claims;
- provided a private right of action to persons alleging national origin/alienage discrimination;
- imposed civil fines of up to $4,000 for each individual against whom an employer discriminates;
- permitted suits by illegal aliens, for the first time, as well as U.S. citizens; and
- subjected employers to suits by both the Special Counsel and EEOC based on the same claim of misconduct;

VII. SUMMARY

In sum, S. 1200 represents a reasonably sound, practical attempt to draft a piece of legislation to clarify our national objectives, control our borders, and to provide an effective method by which all Americans -- including the business community -- can contribute to the solutions for our immigration problems. Although the Chamber primarily has been interested in the employer sanctions provisions of immigration reform efforts, we also have reviewed the other components of S. 1200. We find the entire package to be vastly improved over previous immigration reform packages and, while not perfect, to be a "compromise" worthy of our support.

Again, Senator Simpson, you are to be commended for your sincere effort to find an effective solution to our immigration problem. We will continue to work with you to achieve reasonable immigration reform bills in the Senate, as well as with those House members who are considering alternative approaches to immigration reform.

Thank you.

Senator SIMPSON. Thank you very much, Ralph.

That is a helpful review of the chamber's position. The chamber's action in coming aboard as one of the greatly respected employer groups, corporate groups, private groups, the wide-ranging interests of those in the chamber, really puts onboard every single one of the larger employer representation groups in the United States, which is very interesting, and very helpful, because certainly, they are the ones who are going to be dealing the most intimately with employer sanctions. But to know that the chamber and the National Association of Manufacturers, the Business Roundtable, the small, independent business groups, the National Federation of Independent Businesses, almost without exception are aboard, I think is very interesting and very helpful. I thank you.

Some questions, now. Mr. Keatinge, you state that the ABA's attitude toward sanctions reflects in part a belief that insufficient evidence has been presented that sanctions would actually reduce illegal immigration.

Mr. KEATINGE. That is correct, Senator.

Senator SIMPSON. Which is a rather startling and surprising position to me. I do not know anyone that I have come across in my travels that argues much that employer sanctions would not actually reduce illegal immigration—they may have problems with discrimination, and they may have problems with this or that, but I do not ever hear that one too much—because after extensive consideration of that issue, the Select Commission voted 14 to 2 in favor of employer sanctions. The Senate, on a vote to remove employer sanctions, that vote was 76 to 20, or something. The House vote against removing employer sanctions was tremendous—304 to 120 on that.

So again, that is always curious to me when I deal with the American Bar Association.

Mr. KEATINGE. Senator, might I interrupt and just comment, briefly?

Senator SIMPSON. Yes, you can. I can tell we will have a spirited exchange here, probably, anyway. So yes, please.

Mr. KEATINGE. Senator, that is our position as adopted by our house of delegates in 1983. Since then, we have reassessed the situation as it exists practically. We accept the fact that there are going to be employer sanctions. We accept the fact that the employer sanctions that you have crafted seem to us to be reasonable employer sanctions. The only question we have remaining, then, is the discrimination question. We are not fighting you on the sanctions.

Senator SIMPSON. No. You are not hearing me. I am not arguing you are not in favor of employer sanctions, but I am saying that you are saying that there is insufficient evidence presented that sanctions would actually reduce illegal immigration—if you can hear me, so that we do hear each other. That is important.

Mr. KEATINGE. I agree.

Senator SIMPSON. OK. That is what I am saying. And we heard testimony last week that other nations, I think, obviously, France and Germany, are convinced that sanctions have been effective in reducing illegal immigration, especially after judges and prosecutors were educated in the importance of the new law, which proved that indeed it was more than cost of doing business, especially when fines in Germany, I think, went to $40,000, and $3,000 in France.

Could you share with me why the ABA is skeptical about whether sanctions can be effective. I appreciate your view of the necessity of them, but elaborate on the issue of skepticism on the effectiveness, please.

Mr. KEATINGE. Well, I think it comes in part, even from some of the views that Attorney General Smith expressed the last time he was here, in 1983. At that time, he stated that in his tour around the world, that he had found that while sanctions were effective in Hong Kong, they were not effective in France. And I think there is some of that same skepticism about the relationship between the experience in other countries, and mixed experience at that, and the proposed result of sanctions in this country.

Senator SIMPSON. You apparently do not disagree with the view that employer sanctions in France and Germany have not caused discrimination, or apparently, that is a——

Mr. KEATINGE. I do not think there is much evidence as far as I know either way, Senator. And that is why I did not try to state the discrimination issue too strongly.

Senator SIMPSON. But apparently, you do not see a blatant discrimination in the use of employer sanctions in Germany and France; that is what I understand the statement to be.

Mr. KEATINGE. No, I do not. But the ABA is as concerned with any discrimination, as it is with "blalant" discrimination.

Senator SIMPSON. And yet you say, I think, that the experience may not be comparable to what may happen here, because a large proportion of the illegal immigrants in the United States are from nations which also are the countries of origin for many U.S. citizens. I have difficulty understanding that, because it is my understanding that many of the illegal aliens in Germany are from Turkey, and many in France are from several African countries, and yet there are also many legal residents from those regions in those countries. So, could you explain your testimony on that point, please?

Mr. KEATINGE. I think our concern here is that the biggest single group of illegal aliens is obviously the Hispanic group coming from Mexico and the Central American countries. We have a common border with Mexico. We have a tremendous influx of illegals over that border. We also have a tremendous influx of these same illegals into our major American cities in the Southwest, and also in Chicago and in some of our major Eastern cities.

The problem that we have in controlling this tremendous flow is partly a question of the resources that are going to be allocated to handling that problem, and second, it is a problem of handling within the cities, once these people get there, how do you get them out. Hopefully, with the resources that this committee is asking for the Immigration and Naturalization Service, it will be practically possible to deal with that problem.

I think it is also important, as the Commissioner stated, that voluntary assistance be given to these employers so that this problem can be dealt with.

It is a huge problem. It is a much larger problem, I think, than is faced by most of the European countries that have had to deal with this problem. And it has been allowed to go on so long that it has become so big that it is almost unmanageable. That is where our concern comes from.

Senator SIMPSON. You state in your testimony that, "There will be no legalization without employer sanctions, and no employer sanctions without legalization," and I think that might have referred to something that I was alleged to have said. I certainly have used the first phrase of that sentence, that I thought sincerely, there would be no legalization without employer sanctions. However, I don't remember stating that there would be no employer sanctions without legalization, although I always have been committed to concurrent and contemporaneous legalization.

Then, you recommend a sunset of employer sanctions in 5 years. It seems that that goes a little counter to that. Should we also sunset legalization in 5 years, if we are going to do that?

Mr. KEATINGE. Well, I think they are different problems. I think the question of employer sanctions—we want to be sure that employer sanctions will actually work. We think it is important that Congress revisit this problem in 5 years and take a look and see whether sanctions have been effective. If they have been effective, obviously, they are going to be renewed. If they have not been, or if they need to be modified, it seems to me that is a point at which Congress ought to take another look at employer sanctions.

With respect to legalization, we assume this is going to be a one-time-only process, that there is going to be one date picked, and that is the date, and that is it, and it is not going to be repeated. So a sunset provision would be inappropriate, because legalization would not be, as sanctions would be a continuing problem.

Senator SIMPSON. In opposing a triggered legalization, you state that the resources of the Government are incapable of deporting all of those people. And of course, deportation is repugnant to me, for those who have been here and have established equities in the United States. This is one of the problems of the issue of rewarding those who are here illegally, and I ask, "Well, what did you have in mind for them?" and they will say, "Deport them."

And I say, "Well, you go to Brownsville and tap on the door of a U.S. citizen, an American-Hispanic, and ask him if he is deportable, because I do not care to be part of that hunt." I will skip that one.

That is where we are. That is the alternatives to legalization, which are really no alternatives at all to me.

But what do you think that illegal aliens will do in this country if they cannot obtain employment as a result of employer sanctions? What will they do, in your mind?

Mr. KEATINGE. I think, unless they find that the alternatives in their country of origin are better than the alternatives here, they will stay here, and then they will be a continuing problem for this Administration and successive administrations from here on.

There are varying figures, but let's accept the fact of somewhere between 4 and 6 million illegal immigrants now in this country; 4 and 6 million people are not going to go back to Mexico or Central America. It seems to me that that problem, as Attorney General Smith correctly, I think, analyzed it, has to be dealt with and ought to be dealt with now, and it ought to be dealt with as part of this process.

Senator SIMPSON. Indeed, indeed, indeed.

Let me ask just another question of you, and then turn to Senator Simon, and then I will come back to questions of Mr. Evans.

I would like to ask you about your support for creation of a new ground of Federal antidiscrimination enforcement, based on alienage, or a lack of citizenship. And that, of course, is one of the things that ground things down when we got into the conference committee activity.

We currently have, say, 10 million persons, American citizens, unemployed in this country. And when we get into this issue of discrimination based on alienage, and you describe it to people and say that you are an employer, and there are two people standing in front of you, and one is a Canadian with a green card, and one is a U.S. citizen, and you select the American citizen over the green card holder, you are subject to a charge of discrimination, based on alienage, and your own Government is likely to sue you on that basis.

Are you aware of any other country in the world that has that provision in its laws?

Mr. KEATINGE. No, sir.

Senator SIMPSON. Nor am I. Have you ever heard of any suggestion from the parliament of another nation or government on that one?

Mr. KEATINGE. Not that I know of, sir, no.

Senator SIMPSON. If you find one, or if any of the audience does, share it with me. I would very much like to see how that works—and I mean that, I really do, because that is one of the most curious things that arose in the conference committee, and in my search and search of my staff, you do not find four paragraphs about that issue in all the hearings of the U.S. House of Representatives. One would think you would find that, if that were a burning issue of the day. But knowing how this game works, it is a burning issue of how to blast immigration reform, and so I have learned that one, too, tediously enough.

Paul, your turn.

Senator SIMON. I thank you, Mr. Chairman.

Unfortunately, I am going to have to head off to another meeting right away. But first of all, Mr. Keatinge, I was interested in your reference in the middle of your printed testimony to the deportation campaign conducted in the mid-1950's. I tend to be one of those people who believe we can learn from history. And I candidly was not aware of the deportation campaign of the 1950's until I read your testimony.

What happened then, and what should we learn from that?

Mr. KEATINGE. Well, I cannot give you any great detail on it, but my understanding was that an intensive effort was made to deport illegal aliens at that time; that the factory sweeps were increased, that other efforts were made to deport agricultural workers, that sort of thing. As the select commission report noted, it cost a tremendous amount of money to do, and really, picked up only a relatively small number of people. And our concern is, and the reason we raised that point, is that even with the reduced number of people that were illegal at that time, it did not prove to be successful. And now we have a huge number, and we feel it would be even more unsuccessful and counterproductive.

Senator SIMON. Mr. Evans, if I can just ask you for the record, because I am going to have to leave, I notice in Dick Lesher's testimony that you have apparently presented, that he opposes any antidiscrimination provision.

I think the feeling is, at least among some of us, that we have to have some kind of an antidiscrimination provision, but it should be something that is workable for the small business. I would be interested in any suggestions you or Dr. Lesher or anyone else would have as to how we can do that in a meaningful way and yet not be oppressive to either a big business or some fellow trying to run a restaurant?

Mr. EVANS. Yes, Senator, we will certainly address that and get back to you with it. I hestitate to try to give you an answer at this point.

Senator SIMON. Great.

Mr. EVANS. It is a very big concern of ours.

Senator SIMON. I understand.

Thank you very much, Mr. Chairman.

Senator SIMPSON. Thank you, Senator Simon. I do very much appreciate your thoughtful participation on this issue.

Just a couple more questions and then I will go to Ralph Evans.

You state that the ABA is concerned that sanctions might unduly burden private enterprise with the responsibility of enforcing existing law. And of course, the Chamber had that thought last year, because of employer sanctions provisions that were there then, and after considering the changes we have made this year, there is unified employer support.

And you state that the burden is still on the proponents of employer sanctions to prove that employer sanctions will not cause discrimination. My response is that I think we have done everything possible to remove the incentive to discriminate. We give employers an affirmative defense if they follow the verification procedures. We have a monitoring capability in the bill which has never been quite so detailed.

Is not, then, the burden again upon persons who feel as you do to prove that discrimination is likely and especially when we are faced with the information and the evidence that in the rest of the world it has not happened.

Mr. KEATINGE. Senator, I think if the provisions are left substantially as you have them on employer sanctions, and if we have at least some reasonable anti-discrimination provision in the bill, that the provisions will be adequate, and I think they will meet that test. I think that our overall concern is that S. 1200 does not contain the kind of antidiscrimination language as was included in the House bill last year—and which was retained in the House by an overwhelming margin.

Senator SIMPSON. I guess if you look at it, an employer—I do not see how an employer will be able to very convincingly allege that he did not hire a Hispanic because the employer was fearful of violating employer sanctions, if the employee applicant had all of the adequate documents. So where is the new employment discrimination going to come from?

Mr. **Keatinge**. I think the only type of discrimination that you are likely to have—and I look particularly at the situation as it exists in a city such as Los Angeles—if you get an employer who says, "I am not going to hire any Hispanics, period; I do not care whether they have green cards, I do not care what evidence they have, I am not going to hire any Hispanics," that is the kind of thing that I fear and that I hope can be prevented.

Senator **Simpson**. Well, that may be the toughest part of all, reaching down into that kind of an evil spirit, because people are discriminating today, and they are going to do it with impunity, because they are racist. In the face of civil rights laws which have been on the books for 25 years, we continue to probe and perfect, and still never deal with the ugly-spirited ones that love to do it, love to discriminate.

So, we are involved in dealing with people of good faith and people of good conscience, and most employers in the United States fit in that category. So, the continual drum on some who are pinched and driven and deceptively obsessed with discriminating against their fellow human beings are a different bag.

Mr. **Keatinge**. Senator, if I might add, the problem, it seems to me, is not one necessarily just of racism. It is one of an employer who feels that he has had too much of a burden placed on him by the virtue of the investigation, the detail that he has to check out. Now, your bill has gone a long way to eliminate that, and it seems to me that any reasonable employer ought to be able to look at the applicant and make a decision with respect to his employability, without respect to his race, as long as he has the necessary indicia. That is the kind of thing, I think, that we are concerned about.

Senator **Simpson**. Well, simply having an illegal on the payroll here does not constitute "knowing" employment. That is not the first violation under this bill.

Let us come back to Mr. Evans. In your opinion, how strong is the incentive in S. 1200 for employers to keep the paperwork? If you were advising a small employer on the new employer sanction requirements of this bill, would you recommend to them that they keep the paperwork voluntarily?

Mr. **Evans**. Well, I think it is reasonably simplified. The incentive through simplification is to keep the paperwork. It is not that involved, and it is clearly in the employers' best interest, in that it gives them an affirmative defense should they be found hiring an illegal alien. However it is going to be awfully hard to really look through these counterfeit green cards and things that are readily obtainable.

So I should think it would be in our own best interest to keep the paperwork, and I would think everybody would do it. There are going to be some people, though, perhaps in areas that just do not have a lot of immigration, who are going to feel like, "Well, I never see an immigrant, so why should I bother?"

Senator **Simpson**. I have heard people say that they have never seen illegal, undocumented persons in the United States, and that is a curious statement—but not from you—I never heard that from you.

I think that indeed—and this is the key—that there are employers in the United States who do not hire illegals. And that is the majority.

Mr. Evans. That is right.

Senator Simpson. And so, what we are trying to do is accommodate that majority, and those within that majority who slip, instead of nailing them with two grand right off-the-bat, they get to have the option of a 6-month education period, the 6-month warning period and then a fine of between $100 and $2,000 so that we can have their circumstances presented properly and not hammer them.

With your most practical and extraordinary experience in the workplace, with that fine and remarkable restaurant of yours in McLean, which I have been a patron of and enjoy thoroughly, at Evans Farm Inn, what is the extent of what you see as the impact on the work force—you are very familiar with the restaurant industry, and many studies have shown there is a significant employment of undocumented aliens in that industry, and you represent that industry nationally through your association—not this association, but the National Restaurant Association—could you speak to the restaurant industry's perception of this particular immigration reform effort?

Mr. Evans. Well, first, let me say that in the State of Virginia, it is already illegal to hire an undocumented alien. We probably have around 15 to 20 percent of our workforce at Evans Farm Inn, who are aliens, so we check for documentation and are very careful to do this. And we would comply with any paperwork requirements, as well.

I think you find areas such as Chicago and on the borders where there are far more immigrants and far more undocumented aliens, and I cannot say there are not a lot of undocumented aliens being hired by our restaurant industry. The industry as a whole, as I have realized from the people I have come in contact with, really do not as a whole purposely go out and hire undocumented aliens and I think they would welcome some way to really find out whether an alien applicant is documented or not. You cannot always tell from the paperwork they bring in to you.

Senator Simpson. No; that is very important. But then, if the employer is presented with forged documents and that type of material, the liability does not lay upon him to verify its correctness.

But in this practical experience, what is the extent of alienage discrimination—that is discrimination based upon a person being a noncitizen of the United States—as you see it, in private employment, and should this become a new basis for prohibited discrimination in U.S. civil rights law?

Mr. Evans. Well, I do not think there should be any new series of discrimination laws. I am afraid it is a fact of life in the restaurant industry that a lot of people just do not gravitate toward some of the more menial jobs in the restaurant business, and we do find aliens coming to this country who find this a good entry level into the workplace, and who have a work ethic that is perhaps a little bit different than some of the work ethics of some of the citizens that we see of high school age. And so, if you are not going to hire aliens in the restaurant business, you are going to have about half your work force unavailable to you, and so I just do not see how, as an industry, alienage discrimination is going to be a problem at all. We open our arms to aliens just like the United Nations, as you know. You can count probably 7, 8, or 10 different nationalities when you sit in our restaurant.

Senator SIMPSON. Could you just briefly elaborate somewhat on your concern that the private authority to prompt employer sanctions investigations which is part of S. 1200 might encourage harassment of certain businesses by competitors, unions or disgruntled ex-employees?

Mr. EVANS. I should probably let Virginia dwell on that a little bit, she being more technically involved with this. Can I turn that one over to her?

Senator SIMPSON. Yes, please.

Ms. LAMP. Senator, our concern with the enforcement provisions of your bill centered around—in our testimony, we document the portion of the bill that we are concerned about. But in terms of opening up the enforcement mechanism to allow private individuals to start an investigation of any particular employer or any particular industry, our concern is that there is a potential for misuse or abuse of that particular provision. And you have incorporated some significant safeguards into those provisions, so that the complaints have to be signed, and there is a substantial probability of validity on the face of the complaint. And we appreciate that, and that may be enough. But we wanted to make sure that you recognized that we recognize that there is a potential problem there.

Senator SIMPSON. Indeed, I do. And yet through the correspondence and testimony, we often find the U.S. citizen is the one who is wanting to do that, the U.S. citizen filing a written or a signed complaint respecting violations, and indeed, it is something to guard against. But we felt that certainly, the individual should have that right to express that deep frustration when that is happening and yet not get over into what we had with regard to a government agency or quasi-government agency cranking up to take on the employers of the United States based upon alienage discrimination. That is the key. We are not even suggesting some changing of course from discrimination based on race, religion, national origin, religion, whatever. That is not even part of this. We are talking about alienage, which is one that seemed to have sprung from a new and creative source.

Well, I am pleased that the chamber supports this reform bill, because I always have believed that employers have much to lose if the status quo continues. We are gradually building up the enforcement capability of the Immigration Service, which of course is going to mean more activity in the workplace, more raids—that is what the people are going to expect in the status quo—more budget, more disruptions in the work force for those who employ undocumented workers. And I would just ask you, finally, what can the U.S. chamber do to generate some good, thoughtful response throughout the United States from local chamber of commerce organizations on this issue? I would be interested in your thoughts on that.

Mr. EVANS. I will turn that one over to Virginia as well.

Ms. LAMP. We will be glad, in all of our publications, both our written publications and in our radio shows and in our TV broadcasts, we will certainly talk about your legislation and talk about the merits and the positive features of it. Hopefully, that will educate the State and local chambers and encourage them to get involved in this national problem.

Senator SIMPSON. I think it is the education aspects that are important, because many of the local chambers throughout the United States did not always support the national chamber with regard to the last exercise, and this time it would be good to see that accord, and whatever educational process you exercise would be very important. That is what the whole issue is, anyway, is an educational process, because no one is out to do a number on some ethnic group in the United States.

Someone suggested to me the other day—a very bright, what I would call a progressive, thoughtful person, a thinker—said, "Do you realize that if we applied for admission to the United Nations today, we would be rejected?" The United States of America would be rejected from the United Nations because we have no control over our borders. And that is the first aspect of membership in the United Nations—control over the borders of the country seeking admission. A curious, fascinating little aside.

Well, I appreciate your views on discrimination. It is very, very important that we do not get into something that is going to be discriminatory. And yet the irony remains for me, as to how likely it was really going to be where a person would say, "I am not going to hire any Hispanics," when they live in Los Angeles, where the Hispanic population is 40 percent of the total, and would any rational employer really cut himself off from that kind of a workforce? I think we ought to keep that in mind in this process and try to wade through the stuff. Who is going to cut themselves away from 30 or 40 percent of the workforce? Not many employers I know.

So if discrimination never came up when we did the employer sanctions work in 1971 and 1972, some serious work by Congressman Rodino, I wonder where it really is, honestly is, right here, right now? Well, we want to find that out.

So, thank you very much. I think there will perhaps be some further questions by members of the subcommittee, and they will be submitted, and we would appreciate a prompt response.

Mr. EVANS. Senator, I would like to thank you on behalf of the chamber and the National Restaurant Association for working with us, and I think your bill today represents a lot of changes from previous bills that we could not support, and we look forward to continuing to work with you, and anything that you think we can do to help you, please let us know.

Senator SIMPSON. Thank you very much, Ralph.

Mr. Keatinge?

Mr. KEATINGE. Senator, I would like to express the same thoughts on behalf of the American Bar Association. We would be happy to continue to work with you and your staff, because we think a bill is necessary.

Senator SIMPSON. I do appreciate that—I know you do, and I appreciate your thoughtful review of things, since I brought some things to your attention a couple of years ago.

Mr. KEATINGE. You made us think a little bit more, Senator.

Senator SIMPSON. Well, I think I was a little robust there in my comments.

But let me insert for the record at the point where we had the discussion with Mr. Donahue, the one-page entry from the Select Commission Report on legalization and employer sanctions, just the one page, so that that be inserted in the record so we can review that at the time Tom had a view; we were talking about words, so let's get the exact words to put in there for comparison. So I would put that in the record, move that part of the record.

Senator SIMPSON. And I do thank very much Carl Hampe, John Ratigan, Charles Wood, Dee Dee Herzog, and of course, my extraordinarily capable friend and chief counsel and staff director, Dick Day.

And I thank you very much for your participation.

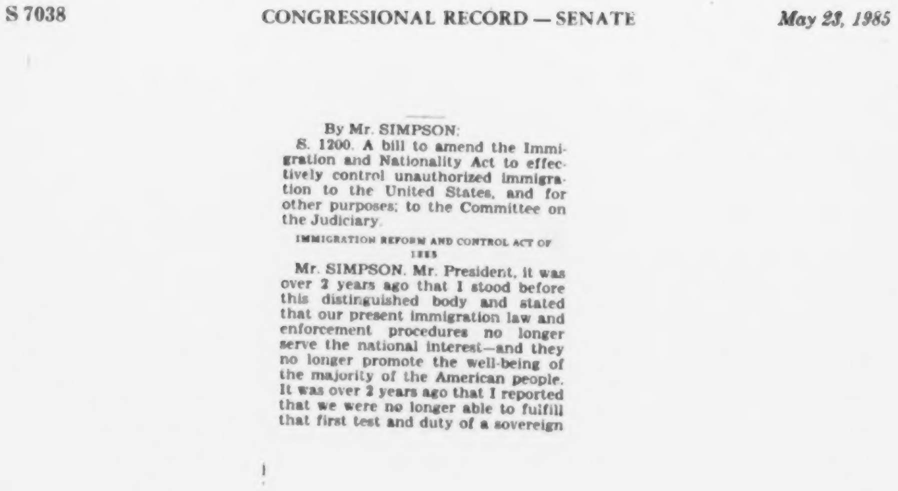
That will conclude the third hearing, and we will move forward now with the legislation.

I thank you so very much.

That will conclude the hearing.

[Whereupon, at 12:25 p. m., the subcommittee was adjourned.]

APPENDIX



S 7038 CONGRESSIONAL RECORD — SENATE *May 23, 1985*

By Mr. SIMPSON:

S. 1200. A bill to amend the Immigration and Nationality Act to effectively control unauthorized immigration to the United States, and for other purposes; to the Committee on the Judiciary.

IMMIGRATION REFORM AND CONTROL ACT OF 1985

Mr. SIMPSON. Mr. President, it was over 2 years ago that I stood before this distinguished body and stated that our present immigration law and enforcement procedures no longer serve the national interest—and they no longer promote the well-being of the majority of the American people. It was over 2 years ago that I reported that we were no longer able to fulfill that first test and duty of a sovereign nation—control of our own borders. It was over 2 years ago that I introduced the Immigration Reform and Control Act of 1983. I regret to inform you that today—in spite of my, and many of my colleague's best efforts—the situations I just described are still assuredly true. Not only the American people and the American Government are aware of it, but people all over the world are aware that the United States cannot, or does not, control its own borders.

It is my judgment that uncontrolled immigration is one of the greatest threats to the future of this country. Uncontrolled immigration portends much injury to our country—to American values, traditions, institutions, and to our way of life contrast, controlled immigration has been one of the finest traditions of our remarkable heritage. We have no desire or intent to terminate that.

Mr. President, last year I advised the distinguished Members of this body that any preoccupation with numbers might tend to diminish the fact that very real human beings are involved in this issue. unfortunately, I had to speak of numbers then, and unfortunately, I must speak of them again today.

At the present time, net immigration—illegal plus legal—probably exceeds 750,000 per year. Hundreds of thousands of illegal immigrants now cross our porous borders every year. Some authorities estimate the new annual inflow at between 250,000 and 500,000 persons. The number of illegal aliens already in the country is unknown, but the Select Commission on Immigration and Refugee Policy utilised the figure of 3.5 to 6 million as the number for 1978. There are surely more now.

Thus, the phenomenon of illegal immigration is growing steadily more critical. In 1980, when I served as a member of the Select Commission, the Immigration Service apprehended 910,000 illegal aliens. In 1982, when the first Simpson-Mazzoli bill was being debated, the INS apprehended 970,000 illegal aliens. In 1983, when the second Simpson-Mazzoli bill was introduced, the INS apprehended 1,219,000 illegal aliens. And in 1984 when the bill passed both Houses of Congress but failed in conference committee, the INS apprehended 1,241,000 illegal aliens. We are setting some dubious records each year, and we will likely set another one this year.

Mr. President, countless studies have also shown that illegal immigration depresses the wages and working conditions of U.S. workers. The flouting of immigration laws also leads to the flouting of other U.S. laws, and illegal immigration creates a furtive, fearful, and easily exploited subclass in our society. This is not a healthy condition for a nation that has always been committed to equality under the law.

Let me say here that I want to reemphasize my deep personal feeling that no individual applying to this country lawfully in search of freedom and opportunity, and desiring to integrate fully into American society, should be discriminated against because of race, creed, color, or religion—which we have certainly sometimes done in our past. I say this to you because I realize that what I am about to say is directed to a most sensitive and complex issue, and there is every risk of misunderstanding.

If uncontrolled immigration is continued at a high level, but a substantial portion of these new persons and their descendents do not integrate fully into society, they may well create in America some of the same social, political, and economic problems which exist in the countries from which they have chosen to depart. Furthermore, if language and cultural separatism rise above a certain level, the unity and political stability of the Nation will—in time—be seriously eroded. Pluralism within a united American nation has been our greatest strength. That unity comes from a common language and a core public culture of certain shared values, beliefs, and customs, which make us distinctly Americans.

Mr. President, three successive administrations have attempted to reform our Nation's immigration laws. PETER RODINO, the deeply respected chairman of the House Committee on the Judiciary, foresaw the problem more than 10 years ago when he guided immigration control legislation through both the 92d Congress and the 93d Congress, only to see both initiatives die here in the Senate. Had that legislation been enacted into law, we would not be facing some of the serious problems confronting us today. The Select Commission on Immigration and Refugee Policy spent 2¼ years studying the problem, and this bill follows many of its recommendations. The Senate and House Subcommittee on Immigration held extensive hearings on every aspect of the issue and solicited the opinions of a diverse group of concerned individuals. On August 17, 1982, during the 97th session of Congress, the Senate passed the bill 80 to 19, displaying broad support from many different constituencies.

In the 98th Congress, the Senate passed the bill by a vote of 76 to 18 on May 18, 1983, and the House under the yeoman leadership of my fine coworker and friend Congressman RON MAZZOLI, then passed the bill by a vote of 216 to 211 on June 20, 1984. While the bill later died at the end of the 98th Congress in a conference committee, this marked the first time in 20 years that both Houses of Congress had passed a major piece of immigration reform legislation. I sincerely believe that the framework of last year's House and Senate bills represent the type of reform of U.S. immigration law and enforcement procedures which the American people desire and deserve—and upon which America's future depends.

The bill which I am introducing today, the Immigration Reform and Control Act of 1985, does contain some changes from previous versions of the immigration bill. However, I believe that these changes represent the culmination of a long learning and education process, and I believe that this bill is a better bill. I have removed some of the provisions which have seemed to be a less important part of the immigration debate, in order to focus our intentions on the most essential elements of the bill. Changes in our system of legal immigration and asylum adjudication have been deleted. In order to respond to the concerns of both the business community and those groups who fear a discriminatory effect from employer sanctions, I have made some corresponding changes in that section of the bill.

Most important, I now believe it is necessary to assure the American public that the legalization of undocumented aliens will not lead to an increased flow of illegal immigrants. The most recent Gallup poll shows that only 35 percent of the American public supports legalization, and 55 percent oppose it. Last year, in the House of Representatives, an amendment to delete entirely the legalization provisions, failed by only 38 votes. It is clear that both the American public and the U.S. Congress have significant concerns about legalization. Therefore, I feel we should return to the Select Commission unanimous finding that legalization should not go into effect until adequate enforcement measures—increased border enforcement, reduction in visa overstays and unauthorized employment—are substantially in place. I believe that this approach is reasonable and desirable. However, we are not attempting to add a new twist to the game of immigration reform. This approach to legalization was recommended by the Select Commission on Refugee Policy—by a unanimous vote of 16 to 0. And let me state further that I remain fully committed to a legalization program. I think it it good public policy and those of us in the Congress who share this commitment are in the position to ensure that we will have a one time full legalization.

Mr. President I will conclude by quoting the former chairman of the Select Commission, my fine friend and coworker father Ted Hesburgh: "We must close the back door to illegal immigration in order to leave the front door open to legal immigration." Those are very wise words indeed. Unless illegal immigration is brought under control, I and many others, fear an increasing public intolerance—a lack of compassion if you will—to all forms of immigration—legal and illegal. It is this unwanted and wretched result that this bill today attempts to avoid.

I ask unanimous consent that the text of the bill and a detailed summary of the bill be printed in the RECORD.

There being no objection, the bill and summary were ordered to be printed in the RECORD, as follows:

S. 1200

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "Immigration Reform and Control Act of 1985".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of, a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

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TITLE I—CONTROL OF ILLEGAL IMMIGRATION

PART A—FUNDING FOR IMPROVED ENFORCEMENT

SEC. 101. AUTHORIZATION OF APPROPRIATIONS FOR ENFORCEMENT AND SERVICE ACTIVITIES OF THE IMMIGRATION AND NATURALIZATION SERVICE AND WAGE AND HOUR ENFORCEMENT.

(a) TWO ESSENTIAL ELEMENTS.—It is the sense of Congress that two essential elements of the program of immigration control established by this Act are—

(1) an increase in the border patrol and other inspection and enforcement activities of the Immigration and Naturalization Service and of other appropriate Federal agencies in order to prevent and deter the illegal entry of aliens into the United States and the violation of the terms of their entry, and

(2) an increase in examinations and other service activities of the Immigration and Naturalization Service and other appropriate Federal agencies in order to ensure prompt and efficient adjudication of petitions and applications provided for under the Immigration and Nationality Act.

(b) INCREASED AUTHORIZATION OF APPROPRIATIONS FOR INS.—Section 404 (8 U.S.C. 1101 note) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 404. There are authorized to be appropriated to the Department of Justice for the Immigration and Naturalization Service—

"(1) for fiscal year 1986, $840,000,000, and

"(2) for fiscal year 1987, $830,000,000.".

(c) SENSE OF CONGRESS REGARDING ENFORCEMENT OF THE IMMIGRATION LAWS.—It is the sense of the Congress that—

(1) the immigration laws of the United States should be enforced vigorously and uniformly, and

(2) in the enforcement of such laws, the Attorney General should take due and deliberate actions necessary to safeguard the constitutional rights, personal safety, and human dignity of United States citizens and aliens.

(d) SUPPLEMENTAL AUTHORIZATION OF APPROPRIATIONS FOR WAGE AND HOUR ENFORCEMENT.—There are authorized to be appropriated, in addition to such sums as may be available for such purposes, such sums as may be necessary to the Department of Labor for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance Programs within the Employment Standards Administration of the Department in order to deter the employment of unauthorized aliens and remove the economic incentive for employers to exploit and use such aliens.

SEC. 102. USER FEES.

(a) AUTHORIZATION OF CERTAIN USER FEES.—Section 281 (8 U.S.C. 1351) is amended—

(1) by amending the heading to read as follows:

"NONIMMIGRANT VISA FEES AND ALIEN USER FEES";

(2) by inserting "(a) NONIMMIGRANT VISA FEES.—" after "SEC. 281."; and

(3) by adding at the end the following new subsection:

"(b) ALIEN USER FEES.—The Attorney General, in consultation with the Secretary of State, may impose fees on aliens with respect to their use of border facilities or services of the Service in such amounts as may reasonably reflect the portion of costs of maintenance and operation of such facilities and provision of such services attributable to aliens' use of such facilities and services.".

(b) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The item in the table of contents relating to section 281 is amended to read as follows:

"Sec. 281. Nonimmigrant visa fees and alien user fees.".

PART B—INCREASED PENALTIES FOR IMMIGRATION-RELATED VIOLATIONS

SEC. 111. UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES.

(a) CRIMINAL PENALTIES.—Subsection (a) of section 274 (8 U.S.C. 1324) is amended to read as follows:

"(a) CRIMINAL PENALTIES.—(1) Any person who—

"(A) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

"(B) knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law; or

"(C) knowingly or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection such alien in any place, including any building or any means of transportation,

shall be fined, imprisoned not more than five years, or both, for each alien in respect to whom any violation of this subsection occurs. For the purposes of subparagraph (C) of this paragraph, employment (including the usual and normal practices incident to employment) by itself does not constitute harboring.

"(2) Any person who, knowingly or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each transaction constituting a violation of this subsection, regardless of the number of aliens involved—

"(A) be fined, or imprisoned not more than one year, or both; or

"(B) in the case of—

"(i) a second offense,

"(ii) an offense done for the purpose of commercial advantage or private financial gain,

"(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined, or imprisoned not more than five years, or both.".

(b) MISCELLANEOUS AMENDMENTS TO SEIZURE AND FORFEITURE PROCEDURES.—Subsection (b) of such section is amended—

(1) in paragraph (1) before subparagraph (A) by striking out "is used" and inserting in lieu thereof "has been or is being used",

(2) by striking out "subject to seizure and" in paragraph (1) and inserting in lieu thereof "seized and subject to",

(3) by inserting "or is being" after "has been" in paragraph (2),

(4) by striking out "conveyances" in paragraph (3) and inserting in lieu thereof "property",

(5) by inserting ", or the Federal Maritime Commission if appropriate under section 203(i) of the Federal Property and Administrative Services Act of 1949," in paragraph (4)(C) after "General Services Administration",

(6) in paragraph (4)—

(A) by striking out "or" at the end of subparagraph (B),

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; or", and

(C) by inserting after such subparagraph the following new subparagraph:

"(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remission or mitigation of forfeiture granted by the Attorney General.";

(7) by striking out ": *Provided*, That" in paragraph (5) and inserting in lieu thereof ", except that",

(8) by striking out "was not lawfully entitled to enter, or reside within, the United States" in paragraph (5) and inserting in lieu thereof "had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law" each place it appears, and

(9) by inserting "or of the Department of State" in paragraph (5)(B) after "Service".

SEC. 112. FRAUD AND MISUSE OF CERTAIN IMMIGRATION-RELATED DOCUMENTS.

(a) Application to Additional Documents.—Section 1546 of title 18, United States Code, is amended—

(1) by amending the heading to read as follows:

"§1546. Fraud and misuse of visas, permits, and other documents";

(2) by striking out "or other document required for entry into the United States" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or authorized employment in the United States";

(3) by striking out "or document" in the first paragraph and inserting in lieu thereof "border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or authorized employment in the United States";

(4) by inserting "(a)" before "Whoever" the first place it appears; and

(5) by adding at the end the following new subsections:

"(b) Whoever uses—

"(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

"(2) a identification document knowing (or having reason to know) that the document is false, or

"(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act, shall be fined, or imprisoned not more than two years, or both.

"(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).".

(b) Conforming Amendment to Table of Sections.—The item relating to section 1546 in the table of sections of chapter 75 of such title is amended to read as follows:

"1546. Fraud and misuse of visas, permits, and other documents.".

SEC. 113. RESTRICTIONS ON ADJUSTMENT OF STATUS.

(a) Requiring Legal Status at Time of Application.—Subsection (c) of section 245 (8 U.S.C. 1255), relating to nonimmigrants who may not adjust to immigrant status while in the United States, is amended to read as follows:

"(c) Aliens for Whom this Section Does Not Apply.—Subsection (a) shall not apply to the following aliens:

"(1) An alien crewman.

"(2)(A) Except as provided in subparagraph (B), an alien who—

"(i) continues in or accepts unauthorized employment before the date of filing an application for adjustment of status,

"(ii) is not in legal immigration status on the date of filing the application for adjustment of status, or

"(iii) has failed to maintain continuously a legal status since the date of entry into the United States.

"(B) Subparagraph (A) shall not apply to an alien who is—

"(i) an immediate relative, described in section 201(b), or

"(ii) a special immigrant described in section 101(a)(27)(H).

"(3) An alien admitted in transit without a visa under section 212(d)(4)(C).".

(b) Effective Date.—The amendment made by subsection (a) shall apply to applications for adjustment of status filed before, on, or after the date of the enactment of this Act.

Part C—Control of Unauthorized Employment of Aliens

SEC. 121. MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.

(a) In General.—(1) Chapter 8 of title II is amended by inserting after section 274 (8 U.S.C. 1324) the following new section:

"UNLAWFUL EMPLOYMENT OF ALIENS

"Sec. 274A. (a) Making Employment of Unauthorized Aliens Unlawful.—

"(1) Hiring, recruiting, or referring.—It is unlawful for a person or other entity to hire, or to recruit or refer for a fee or other consideration, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(2)) with respect to such employment.

"(2) Continuing employment.—It is unlawful for a person or other entity, after hiring an alien for employment to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) Defenses.—

"(A) Compliance with employment verification system.—A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1) with respect to such hiring, recruiting, or referral.

"(B) Presumption for employers of 4 or more employees.—If a person or entity is employing four or more employees and hires (or recruits or refers for a fee or other consideration) for employment in the United States an unauthorized alien, for purposes of paragraph (1) the person or entity shall be presumed to have known that the alien was an unauthorized alien unless the person or entity has complied with the requirements of subsection (b) with respect to the hiring (or recruiting or referral) of that alien.

"(C) Presumption for large recruiters or referrers.—If a person or entity recruits or refers for a fee or other consideration more than four individuals in any 12-month period and recruits or refers for a fee or other consideration for employment in the United States an unauthorized alien, for purposes of paragraph (1) the person or entity shall be considered to have known that the alien was an unauthorized alien unless the person or entity has complied with the requirements of subsection (b) with respect to recruiting or referral of that alien.

"(D) Rebuttal of presumption.—The presumption established by subparagraph (B) or (C) may be rebutted through the presentation of clear and convincing evidence which contradicts the presumption.

"(4) Violators subject to order.—A person or entity that violates paragraph (1) or (2) is subject to an order under subsection (d).

"(b) Employment Verification System.—Except as provided in subsection (c), the requirements referred to in subsections (a)(3) and (d)(2)(C)(i) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following four paragraphs:

"(1) Attestation after examination of documentation.—

"(A) In general.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

"(i) a document described in subparagraph (B), or

"(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine.

"(B) Documents establishing both employment authorization and identity.—A document described in this subparagraph is an individual's—

"(i) United States passport;

"(ii) certification of United States citizenship;

"(iii) certificate of naturalization;

"(iv) unexpired foreign passport, if the passport has an appropriate, unexpired endorsement authorizing the individual's employment in the United States; or

"(v) resident alien card or other alien registration card, if the card—

"(I) contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection, and

"(II) is evidence of authorization of employment in the United States.

"(C) Documents evidencing employment authorization.—A document described in this subparagraph is an individual's—

"(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

"(ii) certificate of birth in the United States or establishing United States nationality at birth, which certificate the Attorney General finds, by regulation, to be acceptable for purposes of this section; or

"(iii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

"(D) Documents establishing identity of individual.—A document described in this subparagraph is an individual's—

"(i) border crossing card or similar alien identification document issued by the Attorney General to aliens and designated for use for this purpose.

"(ii) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

"(iii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (ii), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

"(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment.

"(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

"(A) in the case of the recruiting or referral for a fee or other consideration (without hiring) of an individual, three years after the date of the recruiting or referral, and

"(B) in the case of the hiring of an individual—

"(i) three years after the date of such hiring, or

"(ii) one year after the date the individual's employment is terminated,

whichever is later.

"(4) UNIFORM VERIFICATION POLICY.—The person or entity must apply the requirements of the previous three paragraphs uniformly to all individuals hired (or recruited or referred for a fee or other consideration).

"(5) COPYING OF DOCUMENTATION PERMITTED.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

"(6) LIMITATION ON USE OF ATTESTATION FORM.—A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

"(c) EVALUATION AND CHANGES IN EMPLOYMENT VERIFICATION SYSTEM.—

"(1) PRESIDENTIAL MONITORING AND IMPROVEMENTS IN SYSTEM.—

"(A) MONITORING.—The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

"(B) IMPROVEMENTS TO ESTABLISH SECURE SYSTEM.—To the extent that the system established under subsection (b) is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

"(C) REQUIRING USE OF COUNTERFEIT-RESISTANT SOCIAL SECURITY CARDS.—The President may require, without regard to paragraph (2), that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act.

"(2) RESTRICTIONS ON CHANGES IN SYSTEM.—Except as provided in paragraph (1)(C), any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

"(A) RELIABLE DETERMINATION OF IDENTITY.—The system must be capable of reliably determining whether—

"(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

"(ii) the employee or prospective employee is claiming the identity of another individual.

"(B) USING OF COUNTERFEIT-RESISTANT DOCUMENTS.—If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

"(C) LIMITED USE OF SYSTEM.—Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

"(D) PRIVACY OF INFORMATION.—The system must protect the privacy and security of personal information and identifiers utilized in the system.

"(E) LIMITED DENIAL OF VERIFICATION.—A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

"(F) LIMITED USE FOR LAW ENFORCEMENT PURPOSES.—The system may not be used for law enforcement purposes, other than for enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

"(G) RESTRICTION ON USE OF NEW DOCUMENTS.—If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this Act (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18, United States Code) nor to be carried on one's person.

"(3) NOTICE TO CONGRESS BEFORE IMPLEMENTING CHANGES.—

"(A) IN GENERAL.—The President may not implement any change under paragraph (1) unless at least—

"(i) 60 days, or

"(ii) in the case of a major change described in subparagraph (D), two years,

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

"(B) CONTENTS OF REPORT.—In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

"(C) CONGRESSIONAL REVIEW OF MAJOR CHANGES.—

"(i) HEARINGS AND REVIEW.—The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

"(ii) CONGRESSIONAL ACTION.—No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

"(D) MAJOR CHANGES REQUIRING TWO YEARS NOTICE AND CONGRESSIONAL REVIEW.—As used in this paragraph, the term 'major change' means a change which would—

"(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, or

"(ii) provide for a telephone verification system similar to that described under paragraph (4)(B)(ii);

but does not include a change in any card used for accounting purposes under the Social Security Act.

"(4) DEMONSTRATION PROJECTS.—

"(A) AUTHORITY.—The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than three years.

"(B) REPORTS ON PROJECTS.—The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

"(d) COMPLIANCE.—

"(1) COMPLAINTS AND INVESTIGATIONS.—The Attorney General shall establish procedures—

"(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a),

"(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

"(C) for the investigation of such other violations of subsection (a) as the Attorney General determines to be appropriate, and

"(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) under this subsection.

"(2) ORDER FOR VIOLATIONS.—

"(A) IN GENERAL.—If, after notice and opportunity to request a hearing respecting a violation of subsection (a), the immigration judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a), the judge shall state his findings of fact and issue and cause to be served on such person or entity an order.

"(B) CIVIL PENALTY AS PART OF ORDER.—An order under subparagraph (A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

"(i) not less than $100 and not more than $2,000 for each unauthorized alien with respect to whom a violation of subsection (a) occurred,

"(ii) not less than $2,000 and not more than $4,000 for each such alien in the case of a person or entity previously subject to an order under this subsection, or

"(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity which has engaged or is engaging in a pattern or practice of such violations.

"(C) ADDITIONAL REMEDIES AS PART OF ORDER.—An order under subparagraph (A) may require the person or entity—

"(i) to comply with the requirements of subsection (b) (or subsection (c) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee or other consideration) during a period of up to three years, and

"(ii) to take such other remedial action as is appropriate.

"(D) DISMISSAL OF COMPLAINTS.—If upon the preponderance of the evidence taken, the judge is of the opinion that the person or entity named in the complaint has not violated subsection (a), the judge shall state his findings of fact and shall issue an order dismissing the complaint.

"(3) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

"(A) immigration officers and immigration judges shall have reasonable access to examine evidence of any person or entity being investigated, and

"(B) immigration judges, by subpoena, may compel the attendance of witnesses and the production of evidence at any designated place or hearing.

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

"(4) TREATMENT OF CERTAIN SUBDIVISIONS.—In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment without reference to the practices of, or under the control of, or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(5) ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General may provide for the administrative appellate review of the determination of an immigration judge under this subsection by an appropriate administrative appellate body.

"(e) JUDICIAL REVIEW OF ORDERS.—Judicial review of orders under this subsection shall be exclusively under the procedures provided in chapter 158 of title 28, United States Code, except as follows:

"(1) FILING DEADLINE.—Petitions for review may be filed not later than 45 days after the date of the final order.

"(2) VENUE.—The venue of any petition for review under this subsection shall be in the judicial circuit in which the administrative proceedings before an immigrant judge were conducted in whole or in part, or in the judicial circuit wherein is the residence of the petitioner, but not in more than one circuit.

"(3) SERVICE.—In the case of review sought by an entity other than the Service, the action shall be brought against the Immigration and Naturalization Service as respondent and service of the petition to review shall be made upon the Attorney General and upon the official of the Service in charge of the Service district in which the office of the clerk of the court is located.

"(4) SUBSTANTIAL EVIDENCE.—The petition shall be determined solely upon the administrative record upon which the order is based and the immigration judge's findings of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

"(5) TYPEWRITTEN BRIEFS.—It shall not be necessary to print the record or any part thereof, or the brief, and the court shall review the proceedings on a typewritten record and on typewritten briefs.

In any judicial review of an immigration judge's order under this subsection, the court may provide for such order of enforcement as may be appropriate. Section 279 shall not apply to causes arising under this section.

"(f) ENFORCEMENT OF ORDERS.—If a person or entity fails to comply with a final order issued under subsection (d) against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order imposing the assessment shall not be subject to review.

"(g) MISCELLANEOUS PROVISIONS.—

"(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

"(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee or other consideration for employment, unauthorized aliens.

"(h) DEFINITIONS.—As used in this section—

"(1) IMMIGRATION JUDGE.—The term 'immigration judge' means an immigration officer specially designated to hear cases under this section.

"(2) UNAUTHORIZED ALIEN.—The term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.".

(b) EFFECTIVE DATES.—(1) Except as otherwise provided in this subsection or subsection (c), the amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) Paragraph (1) of section 274A(a) of the Immigration and Nationality Act, making unlawful the hiring, recruiting, or referral of unauthorized aliens for employment, shall only apply to the hiring, recruiting, or referral of individuals occurring after the date of the enactment of this Act.

(3) Paragraph (2) of section 274A(a) of the Immigration and Nationality Act, relating to making unlawful the continuing employment of unauthorized aliens, shall only apply to aliens who are hired after the date of the enactment of this Act.

(4) Section 274A(g)(2) of the Immigration and Nationality Act takes effect on the first day of the seventh month beginning after the date of the enactment of this Act.

(c) PROMULGATION OF REGULATIONS AND EDUCATION AND WARNING PERIOD.—(1) The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act, first issue, on an interim or other basis, such regulations as may be necessary in order to implement section 274A of the Immigration and Nationality Act.

(2) The Attorney General, in cooperation with the Secretaries of Agriculture, Commerce, Health and Human Services, Labor, and the Treasury and the Administrator of the Small Business Administration and with organizations representing or assisting employers, employees, and employment agencies, shall take steps to broadly disseminate forms and information and provide for public education respecting the provisions of section 274A of the Immigration and Nationality Act.

(3) Where the Attorney General has reason to believe that a person or entity may have violated subsection (a) of section 274A of the Immigration and Nationality Act during the six-month period beginning on the first day of the first month beginning after the date of the enactment of this Act, the Attorney General shall notify such person or entity of such belief and shall not conduct any proceeding, nor impose any order, under such section on the basis of such alleged violation or violations.

(4) Where the Attorney General has reason to believe that a person or entity may have violated subsection (a) of section 274A of the Immigration and Nationality Act during the subsequent six-month period, the Attorney General shall, in the first instance of such an alleged violation (or violations) occurring during such period, provide a warning to the person or entity that such a violation or violations may have occurred and shall not conduct any proceeding, nor impose any penalty, under such section on the basis of such alleged violation or violations.

(d) CONFORMING AMENDMENTS TO MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—(1) The Migrant and Seasonal Agricultural Worker Protection Act (Public Law 97-470) is amended—

(A) by striking out "101(a)(15)(H)(ii)" in paragraphs (8)(B) and (10)(B) of section 3 (29 U.S.C. 1802) and inserting in lieu thereof "101(a)(15)(N)";

(B) in section 103(a) (29 U.S.C. 1813(a))—

(i) by striking out "or" at the end of paragraph (4),

(ii) by striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or", and

(iii) by adding at the end the following new paragraph:

"(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act.";

(C) by striking out section 106 (29 U.S.C. 1816) and the corresponding item in the table of contents; and

(D) by striking out "section 106" in section 501(b) (29 U.S.C. 1851(b)) and by inserting in lieu thereof "paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act".

(2) The amendments made by paragraph (1) shall apply to the employment, recruitment, referral, or utilization of the services of an individual occurring on or after the first day of the seventh month beginning after the date of the enactment of this Act.

(e) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by inserting after the item relating to section 274 the following new item:

"Sec. 274A. Unlawful employment of aliens.".

(f) Reports on Implementation of Section.—For monitoring and study respecting the enactment of this section (including actions taken on any discrimination in employment which might result from enactment of this section), see section 402 of this Act.

SEC. 122. TEMPORARY AGRICULTURAL WORKER PROGRAM.

(a) Providing New "N" Nonimmigrant Classification for Temporary Agricultural Workers.—Section 101(a)(15) (8 U.S.C. 1101(a)) is amended—

(1) by inserting "other than agricultural services described in section 216(h)(1)" in subparagraph (H)(ii) after "temporary services or labor",

(2) by striking out "or" at the end of subparagraph (L),

(3) by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or", and

(4) by adding at the end the following new subparagraph:

"(N) an alien, having a residence in a foreign country which has no intention of abandoning, who is coming temporarily to the United States under section 216 to perform agricultural services (as defined in section 216(h)(1)) of a temporary or seasonal nature.".

(b) Involvement of Departments of Labor and Agriculture in Temporary Agricultural Worker Program.—Section 214(c) (8 U.S.C. 1184(c)) is amended—

(1) by striking out "or (L)" in the first sentence and inserting in lieu thereof ", (L), or (N)", and

(2) by adding at the end the following: "For purposes of this subsection the term 'appropriate agencies of Government' means the Department of Labor and includes, with respect to nonimmigrants under section 101(a)(15)(N), the Department of Agriculture. The provisions of section 216 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(N).".

(c) Admission of Temporary Agricultural Workers.—Chapter 2 of title II is amended by adding after section 215 the following new section:

"ADMISSION OF TEMPORARY AGRICULTURAL WORKERS

"Sec. 216. (a) Application for Labor Certification.—

"(1) Requirement.—A petition to import an alien as a temporary agricultural worker (as defined in subsection (h)(3)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

"(A) there are not sufficient workers who are able, willing, and qualified and who will be available at the time and place needed to perform the services involved in the petition, and

"(B) the employment of the alien in such services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

"(2) Payment of required fees.—The Secretary of Labor may require by regulation, as a condition of applying for the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

"(b) Conditions for Denial of Labor Certification.—The Secretary of Labor may not issue a certification under subsection (a) with respect to an employer if the conditions described in paragraph (1) are not met or if any of the following conditions exist:

"(1) Labor dispute.—There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

"(2) Violation of term of previous certification.—

"(A) In general.—The employer at any time during the previous two-year period employed temporary agricultural workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period—

"(i) substantially violated an essential term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers, or

"(ii) has not paid any penalty for such violations which have been assessed by the Secretary of Labor.

"(B) Disqualification limited to one year.—No employer may be denied certification under subparagraph (A) for more than one year for any violation described in that subparagraph.

"(3) Not providing for workers' compensation.—The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(c) Rules Concerning Applications for Labor Certification.—The following rules shall apply in the case of the filing and consideration of an application for a labor certification for a temporary agricultural worker:

"(1) Deadline for filing applications.—The Secretary of Labor may not require that the application be filed more than 65 days before the first date the employer requires the services of the worker.

"(2) Notice within 14 days of deficiencies.—

"(A) Notice of deficiencies.—The application shall be considered to have met the requirements of subsection (a)(1) (other than subparagraph (A) thereof) unless the Secretary of Labor, within 14 days of the date of filing the application, notifies the employer filing the application that the application does not meet the requirements.

"(B) Submittal of modified application.—If the application does not meet the requirements, the notice shall include the reasons therefor and the Secretary shall permit the employer an opportunity for the prompt resubmission of a modified application.

"(3) Issuance of certification.—

"(A) If conditions met.—The Secretary of Labor shall make, not later than 20 days before the date such services are first required to be performed, the certification described in subsection (a)(1) if—

"(i) the employer has complied with the requirements for certification (including the recruitment of eligible individuals as prescribed by regulation), and

"(ii) the employer does not actually have, or has not been provided with referrals of, eligible individuals who have agreed to perform such services on the terms and conditions of a job offer which meet requirements of regulations.

"(B) Continued acceptance of applicants.—A labor certification under this section remains effective only if the employer continues to accept for employment, until the date the temporary agricultural workers depart for work with the employer, eligible individuals who apply or are referred to the employer.

"(4) Providing housing allowance.—In the employer's complying with terms and conditions of employment respecting the furnishing of housing, the employer shall be permitted, at the employer's option and instead of providing for suitable housing accommodations, to substitute payment of a reasonable housing allowance, but only if suitable housing is otherwise available in the proximate area of employment.

"(d) Roles of Agricultural Associations.—

"(1) Permitting filing by agricultural associations.—A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association representing agricultural producers which use agricultural services.

"(2) Treatment of associations acting as employers.—If such an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its member producers to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

"(3) Treatment of violations.—

"(A) Member's violation does not necessarily disqualify association or other members.—If an individual producer member of such an association is determined to have committed an act that under subsection (b)(2) results in the denial of certifications with respect to the member, the denial shall apply only to that member and does not apply to the association or another producer member of the association unless the Secretary determines that the association or other member participated in, or had knowledge of and derived benefit from, the violation.

"(B) Association's violation does not necessarily disqualify members.—If an association representing agricultural producers as an agent, joint employer, or employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, or had knowledge of and derived benefit from, the violation.

"(e) Expedited Administrative Appeals of Certain Determinations.—

"(1) Denial of labor certification.—The Secretary of Labor shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) or, at the applicant's request, for a de novo administrative hearing respecting the denial. In the case of a request for such a review or hearing with respect to denial of certification for temporary agricultural workers to perform agricultural services in the production of perishable commodities (as defined by the Secretary of Agriculture for purposes of this section), the Secretary of Labor shall provide that the review or hearing take place not later than 72 hours after the time the request is submitted.

"(2) Redetermination where unqualified workers referred for employment.—The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of a temporary agricultural worker if the employer asserts that eligible individuals who have been referred are not able, willing, or qualified because of lawful employment-related reasons. If the employer asserts that an eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

"(3) ATTORNEY GENERAL EXPEDITED REVIEW WHERE WORKERS NOT ACTUALLY AVAILABLE.—To the extent that—

"(A) a certification under subsection (a)(1) was denied solely because of the availability of eligible individuals to perform the agricultural services specified in the petition, and

"(B) eligible individuals who agree to perform the services for which the temporary agricultural workers are sought are not actually available at the time and place such services are required,

the Attorney General shall provide by regulation for an expedited review of the petition respecting the workers not later than 72 hours after the time the employer requests expedited review under this paragraph. To the extent that the Attorney General determines that the facts described in the previous sentence exist, the Attorney General may provide for approval of the petition (subject to the other conditions required for the approval of certification under subsection (a)(1)), notwithstanding the denial of the certification by the Secretary of Labor.

"(4) EXPEDITED APPLICATION WHERE UNFORESEEN NEED FOR WORKERS.—

"(A) PERMITTING AMENDED APPLICATION OR ABBREVIATED RECRUITMENT PERIOD.—If the Secretary of Labor makes the determination described in subparagraph (C), the Secretary—

"(i) shall permit the employer to amend or to make an application for certification under subsection (a)(1), and

"(ii) may waive some or all of the 45-day recruitment period described in subsection (c)(1) as necessary to meet the critical need described in subparagraph (C)(i).

"(B) PROMPT REDETERMINATION.—In the case of an amended or new application under subparagraph (A)—

"(i) USING BEST DATA.—The Secretary shall make the determination on the amendment or application based upon the best available labor market information.

"(ii) DEADLINE FOR REDETERMINATION.—Except as provided in clause (iii), the Secretary shall make the determination on the amendment or application not later than 20 days before the date on which the workers are needed.

"(iii) DEADLINE FOR LATE AMENDMENTS AND APPLICATIONS.—If an amendment or application is made at any time later than 3 days before such date of need described in clause (ii), the Secretary shall make the determination on the amendment or application within 72 hours after the date the amendment or application is submitted.

"(C) DETERMINATION OF UNFORESEEN CIRCUMSTANCES.—The determination under subparagraph (A) is that—

"(i) in the case of an employer that has filed an application for a certification under subsection (a)(1), the employer—

"(I) has a critical need for workers before the expiration of the 45-day period described in subsection (c)(1), or

"(II) has a critical need for additional workers who had not been requested in the previous application;

"(ii) in the case of an employer that had not previously filed such an application, the employer has a critical need for workers before the expiration of the 45-day period described in subsection (c)(1) and the employer made prompt application for certification under subsection (a)(1) when the employer's need for workers became known; and

"(iii) based on the employer's past experience and on reasonable expectations, the need for such workers at the time required could not have been foreseen.

"(5) PERMITTING PRESENTATION OF COUNTERVAILING EVIDENCE.—If the Secretary of Labor denies a certification under subsection (a)(1) or fails to act on the application, the Attorney General may permit the applicant to present countervailing evidence to the Attorney General that—

"(A) there are not sufficient workers who are able, willing, and qualified and who will be available at the time and place needed to perform the services involved in the petition for which the certification is sought, and

"(B) the employment policies of the Department of Labor have been observed.

"(f) ENTRY AND TRANSFER OF TEMPORARY AGRICULTURAL WORKERS.—

"(1) TIME LIMITATION.—An alien may not be admitted to the United States as a temporary agricultural worker for an aggregate period longer than the period (or periods) determined by regulations of the Attorney General. The regulations may provide for a period of admission of longer than one year in the case of agricultural services which the Secretary of Labor has recognized, for purposes of the admission of certain nonimmigrants under section 101(a)(15)(H)(ii), before the date of the enactment of this section.

"(2) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

"(3) TRANSFER OF WORKERS AMONG EMPLOYERS PERMITTED.—Nothing in this section shall prohibit an employer which has a petition approved with respect to the importation of temporary agricultural workers from hiring such a worker who has completed a work contract entered into with another employer. The Attorney General shall provide for a procedure to allow temporary agricultural workers, who have completed a work contract under this section and who are not otherwise deportable, to remain in the United States for brief periods in which to seek and accept employment with employers who are authorized to employ the workers.

"(g) MISCELLANEOUS PROVISIONS.—

"(1) AUTHORITY OF SECRETARY OF LABOR.—The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

"(2) APPROPRIATE DOCUMENTATION.—The Attorney General shall provide for such endorsement of entry and exit documents of temporary agricultural workers as may be necessary to carry out this section and to provide notice for purposes of section 274A.

"(3) PREEMPTION.—The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

"(h) DEFINITIONS.—For purposes of this section:

"(1) AGRICULTURAL SERVICES.—The term 'agricultural services' has the meaning given such term by the Secretary of Labor in regulations and includes—

"(A) agricultural labor, defined in section 3121(g) of the Internal Revenue Code of 1954, and

"(B) agriculture, as defined in section 3(f) of the Fair Labor Standards Act of 1938.

"(2) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(h)(2)) with respect to that employment.

"(3) TEMPORARY AGRICULTURAL WORKER.—The term 'temporary agricultural worker' means a nonimmigrant described in section 101(a)(15)(N).".

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 404 (8 U.S.C. 1101 note), as amended by sections 101(b) and 102(b) of this Act, is further amended by adding at the end the following new subsections:

"(d) AUTHORIZATIONS OF APPROPRIATIONS FOR SECRETARY OF LABOR.—(1) There are authorized to be appropriated to the Secretary of Labor for each fiscal year, beginning with fiscal year 1986, $10,000,000 for the purposes—

"(A) of recruiting domestic workers for temporary services which might otherwise be performed by temporary agricultural workers described in section 216, and

"(B) of monitoring terms and conditions under which such temporary agricultural workers (and domestic workers employed by the same employers) are employed in the United States.

"(2) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1986, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under section 216 and under section 212(a)(14).

"(e) AUTHORIZATION OF APPROPRIATIONS FOR SECRETARY OF AGRICULTURE.—There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1986, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under section 216.".

(e) PROHIBITING ADJUSTMENT OF STATUS OF TEMPORARY AGRICULTURAL WORKERS.—(1) Section 245(c) (8 U.S.C. 1255(c)), as amended by section 113(a) of this Act, is further amended by adding at the end the following new paragraph:

"(4) An alien (other than an immediate relative specified in section 201(b)) who entered the United States classified as a nonimmigrant under section 101(a)(15)(N).".

(2) Section 248(1) (8 U.S.C. 1258(1)) is amended by striking out "or (K)" and inserting in lieu thereof "(K), or (N)".

(f) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) of this section apply to petitions and applications filed under sections 214(c) and 216 of the Immigration and Nationality Act on or after the first day of the seventh month beginning after the date of the enactment of this Act (hereinafter in this section referred to as the "effective date").

(g) REGULATIONS.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(N) and 216 of the Immigration and Nationality Act. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.

(h) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by inserting after the item relating to section 215 the following new item:

"Sec. 216. Admission of temporary agricultural workers.".

SEC. 122. AGRICULTURAL LABOR TRANSITION PROGRAM.

(a) ESTABLISHMENT OF TRANSITION PROGRAM.—The Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall promulgate rules and regulations for the implementation of an agricultural labor transition program. The program shall be effective for a three-year period beginning on the first day of the seventh month beginning after the date of enactment of this Act.

(b) Limitation on Number of Workers Under Program.—During the first year of the transition program, an agricultural employer, except as provided in (c), (d), and (e), may, as provided by regulation, employ up to 100 percent of his nondomestic seasonal agricultural worker need with transitional workers. During the second and third years of the program, the employer may employ up to 67 percent and 33 percent, respectively, of his nondomestic seasonal agricultural worker needs with transitional workers.

(c) Cannot Replace Legal Workers.—Nothing in this section shall permit transitional workers to replace available United States workers or legal foreign workers admitted under the Immigration and Nationality Act.

(d) Coverage Under Other Employment Laws.—All workers employed under the provisions of this section shall be fully protected by all Federal and State laws and regulations governing the employment of United States migrant and seasonal agricultural workers.

(e) Eligibility of Aliens.—(1) An undocumented alien in the United States shall be eligible to be a transitional worker under the provisions of this section if the person is employed or has been employed as a seasonal agricultural worker in the United States for at least 90 days during a period of time after January 1, 1980.

(2) An undocumented worker shall not be eligible to be a transitional worker and may not be registered under this section if the person is deportable for any reason other than those described in paragraphs (2) and (9) of section 241(a) of the Immigration and Nationality Act, or on the basis, under paragraph (1) of that section, of being excludable at the time of entry under paragraph (19), (20), or (26) of section 212(a) of such Act. Only persons employed as transitional workers and registered as such by the Attorney General during the first year of the program shall be eligible during the second and third years.

(3) A transitional worker under this section is not eligible to apply for adjustment of status under section 245(a) of the Immigration and Nationality Act, unless the alien is an immediate relative described in section 201(b) of such Act.

(f) Requirements for Employers to Participate.—To employ transitional workers under the provisions of this section, an agricultural employer must—

(1) notify the Attorney General of the employer's intention to participate in the transition program within twelve months of the beginning of the program, and

(2) provide such information relating to the employer's requirements for seasonal agricultural workers in months or other periods in previous and future years as the Attorney General may specify.

(g) Reports on Use of Workers.—After an employer begins participation in the agricultural labor transition program the employer shall provide, upon request, to the Attorney General a numerical count of the number of transitional workers employed and the total number of domestic and foreign seasonal agricultural workers employed by the employer.

(h) Application of Standards for Temporary Agricultural Workers in Certain Cases.—Any eligible employer under the transition program who employs nonimmigrant alien agricultural workers under the provisions of section 216 of the Immigration and Nationality Act shall provide wages and working conditions as required by subsection (a)(1)(B) of such section to all similarly employed workers of that employer.

(i) Employment Does Not Preclude Legalization of a Worker.—Agreement by an alien to be a transitional worker would not preclude that alien from eligibility under the legalization provisions of title II of this Act.

(j) Payment of Fees.—The Attorney General may require by regulation, as a condition of participation by an employer in the transition program, the payment of a fee to recover the reasonable costs of processing registrations under the transition program.

(k) Treatment of Certain Documentation.—In accordance with regulations of the Attorney General, a work permit or other documentation issued under this section to a transitional worker shall be considered to be documentation evidencing authorization of employment for purposes of section 274A(b)(1)(C)(iii) of the Immigration and Nationality Act and an alien employed by an employer and in possession of a properly endorsed work permit or other such documentation for a period of time shall be considered (for purposes of section 274A(h)(2) of such Act) to be authorized by the Attorney General to be so employed during that period of time. For purposes of section 3121(a)(1) of the Internal Revenue Code of 1954 and section 210(a) of the Social Security Act, a transitional worker performing seasonal agricultural services for an employer participating under the program shall be considered to be lawfully admitted to the United States on a temporary basis to perform agricultural labor.

(l) Miscellaneous Administrative Provisions.—(1) Notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Attorney General is authorized to expend from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act, such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of this section during the period of the transition program.

(2) Use of retired federal employees.—Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the annuity of a retired employee of the Federal Government shall not be reduced while such individual is temporarily employed by the Service for the period of the transition program to perform duties in connection with the program.

SEC. 124. COMMISSION ON AGRICULTURAL WORKER PROGRAMS.

(a) Establishment and Composition of Commission.—(1) There is established a commission (hereinafter in this section referred to as the "Commission") to be composed of 12 members—

(A) two to be appointed by the Attorney General,

(B) two to be appointed by the Secretary of Labor,

(C) two to be appointed by the Secretary of Agriculture,

(D) three to be appointed by the Speaker of the House of Representatives, and

(E) three members to be appointed by the President pro tempore of the Senate.

(2) In appointing individuals as members, the Attorney General, the Secretaries of Labor and Agriculture, the Speaker, and the President pro tempore shall assure that members include some individuals who are representative of labor organizations for agricultural workers and some individuals who are representative of agricultural employers of nondomestic workers. Appointments to the Commission shall be made in a manner that provides for balanced representation of the various interests in the matters considered by the Commission.

(3) A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(4) Appointments to the Commission shall first be made within 30 days after the date of the enactment of this Act.

(5) Members shall be appointed to serve for the life of the Commission.

(b) Review of Agricultural Labor Programs.—(1) The Commission shall study and review—

(A) the temporary agricultural worker program described in section 216 of the Immigration and Nationality Act, and

(B) the agricultural labor transition program under section 123 of this Act,

particularly as such programs impact on the labor needs of agricultural employers in the United States and on the wages and working conditions of United States agricultural workers.

(2) The Commission shall specifically review the following with respect to the temporary agricultural worker program under section 216 of the Immigration and Nationality Act:

(A) The standards described in subsection (a)(1) of that section for the certification respecting temporary agricultural workers.

(B) Whether or not there should be a statutory or other specific limit on the number of such workers who may be imported in any period.

(C) Whether or not payments equivalent to the taxes otherwise imposed under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act should be made by the employers of such workers and what use should be made of these payments.

(D) What is a proper length of time and proper mechanism for the recruitment of domestic workers before importation of such foreign workers.

(E) Whether foreign agricultural workers should be contractually restricted to employment with specific employers.

(F) Whether current labor standards offer adequate protection for domestic and foreign agricultural workers.

(G) Whether certain geographic regions need special programs or provisions to meet their unique needs.

(c) Report to Congress.—(1) The Commission shall report to the Congress not later than two years after the effective date (described in section 122(f)) on its reviews under subsection (b). The Commission shall include in its report recommendations for improvements in the temporary agricultural worker program under section 216 of the Immigration and Nationality Act, including specific legislative recommendations—

(1) on the matter specifically reviewed under subsection (b)(2),

(2) improving the timeliness of decisions regarding the admission of temporary agricultural workers under the program,

(3) removing any current economic disincentives to hiring United States citizens or permanent resident aliens where temporary agricultural workers have been requested, and

(4) improving the cooperation among government agencies, employers, employer associations, workers, unions, and other worker associations to end the dependence of any industry on a constant supply of temporary foreign agricultural workers.

(d) Compensation of Members.—(1) Each member of the Commission who is not an officer or employee of the Federal Government is entitled to receive, subject to such amounts as are provided in advance in appropriations Acts, the daily equivalent of the minimum annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which the member is engaged in the actual performance of duties of the Commission. Each member of the Commission who is such an officer or employee shall serve without additional pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence.

(f) Meetings of Commission.—(1) Seven members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(2) The Chairman and the Vice Chairman of the Commission shall be elected by the members of the Commission for the life of the Commission.

(3) The Commission shall meet at the call of the Chairman or a majority of its members.

(g) Staff.—(1) The Chairman, in consultation with the Vice Chairman, may appoint and fix the compensation of a staff director and such other additional personnel as may be necessary to enable the Commission to carry out its functions, without regard to the laws, rules, and regulations governing appointment in the competitive service. Any Federal employee subject to those laws, rules, and regulations may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(2) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the minimum annual rate of basic pay payable for GS-18 of the General Schedule.

(g) Authority of Commission.—(1) The Commission may for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate.

(2) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

(3) The Commission may accept, use, and dispose of gifts or donations of services or property.

(4) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(5) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(h) Authorization of Appropriations.—(1) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(2) Notwithstanding any other provision of this section, no payment, or authorization to make payments or to enter into contracts under this section, shall be effective to such extent, or in such amounts, as are provided in advance in appropriations Acts.

(i) Termination Date.—The Commission shall cease to exist 27 months after the effective date (described in section 123(f)).

TITLE II—LEGALIZATION OF STATUS

SEC. 201. LEGALIZATION COMMISSION.

(a) Establishment and Composition of Commission.—(1) There is established a Select Commission on Legalization (hereinafter in this section referred to as the "Commission"), to be composed of 16 members—

(A) eight to be appointed by the President (not more than four of whom may be members of the same political party) from a list of names submitted by the Speaker of the House of Representatives and

(B) eight to be appointed by the President (not more than four of whom may be members of the same political party) from a list of names submitted by the President pro tempore of the Senate.

(2) Each list submitted under paragraph (1) shall contain the names of at least 24 individuals, not more than 12 of whom are members of the same political party, and none of whom are officials or employees in the legislative branch of the Federal Government.

(3) A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(4) The Speaker of the House of Representatives and the President pro tempore of the Senate shall submit the lists described in paragraph (2) to the President not later than 30 days after the date of the enactment of this Act and the President shall first appoint individuals as members of the Commission within 30 days after the date of receipt of such lists.

(5) Members shall be appointed to serve for the life of the Commission.

(b) Duties of Commission.—The Commission shall monitor and review—

(1) the border patrol and other enforcement programs of the Federal Government designed to control substantially the illegal entry of aliens into the United States and to prevent and deter substantially violations of the terms of entry, including the amount of resources devoted to these programs and their effectiveness, and

(2) the programs of the Federal Government designed to eliminate substantially the employment of unauthorized aliens in the United States, including the amount of resources devoted to these programs and their effectiveness.

The Commission may also study improvements that can be made to improve the effectiveness of these programs.

(c) Reports to Congress.—(1) The Commission shall transmit a report to Congress on its activities not later than one year after the date a majority of its members are first appointed, and (until its expiration) not less frequently than annually thereafter.

(2) Each report shall include a description of the increase in resources being devoted to the programs described in subsection (b) and the effect of the increase and such recommendations for improvements in the programs as the Commission determines to be appropriate.

(3) Each report also shall contain a finding of whether the following conditions have been met:

(A) Programs of the Federal Government are in effect, and have adequate resources, to control substantially illegal entry of aliens into the United States, to prevent and deter substantially violations of the terms of entry, and to eliminate substantially the employment of unauthorized aliens in the United States.

(B) There is substantial likelihood that these programs will continue to remain effective after the implementation of the program of legalization under section 202 of this Act.

(d) Compensation of Members, Meetings, Staff, Authority of Commission, and Authorization of Appropriations.—(1) The provisions of subsection (d), (e), (f)(2), (f)(3), (g), and (h) of section 124 of this Act shall apply to the Commission under this section in the same manner as they apply to the Commission established under section 124.

(2) Nine members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(e) Termination Date.—The Commission shall cease to exist upon the effective date of the legalization program (described in section 202(a)(1)(C)), except that the Commission may continue to function for up to 90 days thereafter for the purpose of concluding its activities.

SEC. 202. LEGALIZATION OF STATUS.

(a) Temporary Residence Status.—The Attorney General may, in his discretion and under such regulations as he shall prescribe, adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) Timely application.—

(A) During application period.—Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 90 days after the effective date of the legalization program, described in subparagraph (C)) designated by the Attorney General.

(B) Application within 30 days of show-cause order.—An alien who, at any time during the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242 of the Immigration and Nationality Act, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 12-month period or on the date of the issuance of such order, whichever day is later.

(C) Effective date of legalization program.—As used in this section, the term "effective date of the legalization program" means the date the Legalization Commission reports, under section 201(c)(3), that conditions described in such section have been met.

(D) Information included in application.—Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 204(a) of the Immigration and Nationality Act.

(2) Continuous unlawful residence since 1980.—

(A) In general.—The alien must establish that he either (i) arrived in the United States before January 1, 1980, and that he has resided continuously in the United States in an unlawful status since such date, or (ii) is a special Cuban or Haitian entrant (as described in subparagraph (D)).

(B) Nonimmigrants.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1980, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

(C) Exchange visitors.—If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J) of the Immigration and Nationality Act), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof.

(D) Special cuban or haitian entrant.—As used in this section, the term "special Cuban or Haitian entrant" means an alien who is—

(i) a national of Cuba who arrived in the United States and presented himself for inspection after April 20, 1980, and before January 1, 1981, and who is still physically present in the United States;

(ii) a national of Haiti who on December 31, 1980, was the subject of exclusion or deportation proceedings under section 236 or section 242 of the Immigration and Nationality Act, including a national of Haiti who on that date was under an order of exclusion and deportation or under an order of deportation which had not yet been executed;

(iii) a national of Haiti who was paroled into the United States under section 212(d)(5) of such Act or was granted voluntary departure before December 31, 1980, and was physically present in the United States on that date; or

(iv) a national of Cuba or Haiti who on December 31, 1980, had an application for asylum pending with the Immigration and Naturalization Service.

(3) Continuous physical presence since enactment.—The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

(4) Admissible as immigrant.—The alien must establish that he—

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

(D) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

(b) Subsequent Adjustment to Permanent Residence and Nature of Temporary Resident Status.—

(1) Adjustment to permanent residence.—The Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) Timely application.—The alien must apply for such adjustment during the 12-month period beginning with the first day of the thirty-first month that begins after the date the alien was granted such temporary resident status.

(B) Continuous lawful residence.—

(i) In general.—The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

(ii) Treatment of certain absences.—An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

(C) Admissible as immigrant.—The alien must establish that he—

(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), and

(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

(D) Basic citizenship skills.—

(i) In general.—The alien must demonstrate that he either—

(I) meets the requirements of section 312 of the Immigration and Nationality Act (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) Exception for elderly individuals.—The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older.

(2) Termination of temporary residence.—The Attorney General shall provide for termination of temporary resident status granted an alien under this subsection—

(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

(B) if the alien commits an act that—

(i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or

(ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

(C) at the end of the forty-second month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

(3) Authorized travel and employment during temporary residence.—During the period an alien is in the lawful temporary resident status granted under subsection (a)—

(A) Authorization of travel abroad.—The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as the Attorney General determines reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1).

(B) Authorization of employment.—The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an "employment authorized" endorsement or other appropriate work permit.

(c) Applications for Initial Adjustment of Status.—

(1) To whom may be made.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(A) with the Attorney General, or

(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term "qualified designated entity" means an organization or person designated under paragraph (2).

(2) Designation of qualified entities to receive applications.—For purposes of assisting in the program of legalization provided under this section, the Attorney General shall designate qualified organizations and State and local governments as qualified designated entities for purposes of this section.

(3) Treatment of applications by qualified designated entities.—Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(4) Penalties for false statements in applications.—Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined, or imprisoned not more than five years, or both.

(5) Application fees.—

(A) Fee schedule.—The Attorney General shall prescribe a fee of $100 or more to be paid by each alien who files an application for adjustment of status under subsection (a) or subsection (b)(1).

(B) Use of fees.— The Attorney General shall deposit payments received under the preceding sentence in a separate account and amounts in such account shall be available, without fiscal year limitation, only to cover administrative expenses incurred in connection with the review of applications filed under this section.

(d) Waiver of Numerical Limitations and Certain Grounds for Exclusion.—

(1) Numerical limitations do not apply.—The numerical limitations of section 201 and 202 of the Immigration and Nationality Act shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) Waiver of grounds for exclusion.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)(i)—

(A) Grounds of exclusion not applicable.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act shall not apply.

(B) Waiver of other grounds.—

(i) In general.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) of such Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) Grounds that may not be waived.—The following provisions of section 212(a) of such Act may not be waived by the Attorney General under clause (i):

(I) Paragraphs (9) and (10) (relating to criminals).

(II) Paragraph (15) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence.

(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(e) Temporary Stay of Deportation and Work Authorization During Application Period.—The Attorney General shall provide that in the case of an alien who, during the application period described in subsection (a)(1), presents an application for adjustment of status under subsection (a) which application establishes a prima facie case of eligibility to have his status adjusted under such subsection, and until a final administrative determination on the application has been made in accordance with this section, the alien—

(i) may not be deported, and

(2) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

This subsection shall not be construed as preventing the Attorney General from commencing deportation proceedings against any alien.

(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) LIMITATION ON ADMINISTRATIVE AND JUDICIAL REVIEW.—Except as provided in paragraph (4) there shall be no administrative or judicial review (by class action or otherwise) of a decision or determination under this section.

(2) NO REVIEW FOR LATE FILINGS.—No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

(3) NO COLLATERAL ATTACKS.—An alien denied adjustment of status under this section may not raise a claim respecting such adjustment in any proceeding of the United States or any State involving the status of such alien, including any proceeding of deportation or exclusion under this Act.

(4) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of a final determination respecting an application for adjustment of status under this section. Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and may not review a denial described in paragraph (2).

(g) IMPLEMENTATION OF SECTION.—

(1) REGULATIONS.—The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

(A) regulations establishing a definition of the term "resided continuously", as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

(B) such other regulations as may be necessary to carry out this section.

(2) CONSIDERATIONS.—In prescribing regulations described in paragraph (1)(A)—

(A) PERIODS OF CONTINUOUS RESIDENCE.—The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States.

(B) ABSENCES CAUSED BY DEPORTATION OR ADVANCED PAROLE.—The Attorney General shall provide that—

(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

(C) WAIVERS OF CERTAIN ABSENCES.—The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(D) USE OF CERTAIN DOCUMENTATION.—The Attorney General shall require that—

(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

(3) INTERIM FINAL REGULATIONS.—Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC ASSISTANCE.—During the six-year period beginning on the date an alien is granted lawful temporary resident status under subsection (a) and notwithstanding any other provision of law—

(1) an alien (other than a special Cuban and Haitian entrant, as defined in subsection (a)(2)(D)) granted lawful resident status under this section is not eligible for—

(A) financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government,

(B) medical assistance under a State plan approved under title XIX of the Social Security Act, and

(C) assistance under the Food Stamp Act of 1977, and

(2) a State or political subdivision therein may, to the extent consistent with paragraph (1), provide that the alien is not eligible for welfare assistance furnished under the law of that State or political subdivision.

For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section. Unless otherwise specifically provided by law, an alien in temporary lawful residence status granted under subsection (a) shall not be considered (for purposes of any law of a State or political subdivision providing welfare assistance) to be permanently residing in the United States under color of law.

(i) MISCELLANEOUS PROVISIONS.—

(1) DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.—During the three-month period beginning on the effective date of the legalization program, the Attorney General, in cooperation with qualified designated entities and the Secretary of Labor, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

(2) PROCEDURES FOR PROPERTY ACQUISITION OR LEASING.—Notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Attorney General is authorized to expend from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act, such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of this section. This authority shall end two years after the effective date of the legalization program.

(3) USE OF RETIRED FEDERAL EMPLOYEES.—Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the annuity of a retired employee of the Federal Government shall not be reduced while such individual is temporarily employed by the Service for a period of not to exceed 18 months to perform duties in connection with the adjustment of status of aliens under this section.

(4) APPLICATION OF PROVISIONS OF IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this section, the definitions contained in the Immigration and Nationality Act apply in the administration of this section. Nothing in this section shall be held to repeal, amend, alter, modify, effect, or restrict the powers, duties, functions, or authority of the Attorney General in the administration and enforcement of such Act or any other law relating to immigration, nationality, or naturalization. The fact that an alien may be eligible to be granted lawful residence status under this section shall not preclude the alien from seeking such a status under any other provision of law for which the alien may be eligible.

(j) LIMITING APPLICATION OF PUBLIC LAW 89-732.—The first section of Public Law 89-732 shall not apply to any alien who is first inspected and admitted or paroled into the United States after the date of the enactment of this Act.

SEC. 203. STATE LEGALIZATION IMPACT ASSISTANCE GRANTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to make payments to States (and for related Federal administration costs) under this section $600,000,000 for each of three fiscal years, beginning with the fiscal year in which the application period (described in section 202(a)(1)(A)) ends.

(b) CAPPED ENTITLEMENT.—(1) The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall provide, in accordance with this section and from the allotment for that State determined under paragraph (2), for payment to each of the States with an application approved under this section for reimbursement of the costs—

(A) of public programs of assistance provided with respect to eligible legalized aliens, and

(B) for the imprisonment of aliens who are in the United States unlawfully and—

(i) whose most recent entry into the United States was without inspection, or

(ii) whose most recent admission to the United States was as a nonimmigrant but—

(I) whose period of authorized stay as a nonimmigrant expired, or

(II) whose unlawful status was known to the Government,

before the date of the commission of the crime for which the imprisonment was imposed.

(2)(A) The Secretary shall establish a formula for determining the amount of the allotment to each State under this section for each fiscal year. Such formula shall, subject to subparagraph (B), take into account—

(i) the number of eligible legalized aliens (as defined in subsection (i)(3)) residing in the State in that fiscal year,

(ii) the ratio of the number of eligible legalized aliens in the State to the total number of residents of that State and to the total number of such aliens in all the States in that fiscal year,

(iii) the amount of expenditures the State is likely to incur in that fiscal year in providing assistance for eligible legalized aliens under programs of public assistance (as defined in subsection (i)(2)), and

(iv) the ratio of the amount of expenditures referred to in clause (iii) in the State to the total amount of such expenditures in all of the States,

in a manner that provides for an equitable and balanced distribution of funds among the States.

(B)(i) The total of the allotments to States under this section is equal to $600,000,000 for each of the three fiscal years described in subsection (a).

(ii) To the extent that all the funds appropriated under this section for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under this section for the fiscal year or because some States have indicated in their description of activities that they do not intend to use the full amount of such allotments in that fiscal year and the succeeding fiscal year, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this clause.

(2) In determining the number of eligible legalized aliens for purposes of paragraph (1)(A), the Secretary may estimate such number on the basis of such data as he may deem appropriate.

(3) For each fiscal year the Secretary shall make payments, as provided by section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), to each State from its allotment under this subsection. Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

(c) Statements and Assurances.—(1) No State is eligible for payment under this section unless the State—

(A) has filed with, and had approved by, the Secretary an application containing such information, including the information described in paragraph (2) and criteria for and administrative methods of disbursing funds received under this section, as the Secretary determines to be necessary to carry out this section, and

(B) transmits to the Secretary a statement of assurances that certifies that (i) funds allotted to the State under this section will only be used to carry out the purposes described in subsection (d), (ii) the State will provide a fair method (as determined by the State) for the allocation of funds among State and local agencies in accordance with subsection (d)(2), and (iii) fiscal control and fund accounting procedures will be established that are adequate to meet the requirements of subsections (e) and (f).

(2) The application of each State under this section for each fiscal year must include detailed information on—

(A) the number of eligible legalized aliens residing in the State, and

(B) the costs (excluding any such costs otherwise paid from Federal funds) which the State and each locality is likely to incur for programs of public assistance and for imprisonment costs described in subsection (b)(1)(B).

(d) Use of Funds.—A State may use amounts paid to it under this section only—

(1) for the purpose of providing assistance with respect to eligible legalized aliens under programs of public assistance and under programs of public health assistance, but only to the extent such assistance is otherwise available under such programs to citizens residing in the State, and

(2) for the purpose of paying for costs incurred by the State for the imprisonment of aliens described in subsection (b)(1)(B).

(e) Reports and Audits.—(1)(A) Each State shall prepare and submit to the Secretary annual reports on its activities under this section. In order properly to evaluate and to compare the performance of different States assisted under this section and to assure the proper expenditure of funds under this section, such reports shall be in such form and contain such information as the Secretary determines (after consultation with the States and the Comptroller General) to be necessary—

(i) to secure an accurate description of those activities,

(ii) to secure a complete record of the purposes for which funds were spent, of the recipients of such funds, and of the progress made toward achieving the purposes of this section, and

(iii) to determine the extent to which funds were expended consistent with subsection (d).

Copies of the report shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(B) The Secretary shall annually report to the Congress on activities funded under this section and shall provide for transmittal of a copy of such report to each State.

(2)(A) Each State shall, not less often than once every two years, audit its expenditures from amounts received under this section. Such State audits shall be conducted by an entity independent of the State agency administering a program funded under this section in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions and generally accepted auditing standards. Within 30 days following the completion of each audit report, the State shall submit a copy of that audit report to the Secretary.

(B) Each State shall repay to the United States amounts found by the Secretary, after notice and opportunity for a hearing to the State, not to have been expended in accordance with this section and, if such repayment is not made, the Secretary may offset such amounts against the amount of any allotment to which the State is or may become entitled under this section or may otherwise recover such amounts.

(C) The Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this section in accordance with this section. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(3) The State shall make copies of the reports and audits required by this subsection available for public inspection within the State.

(4)(A) For the purpose of evaluating and reviewing the assistance provided under this section, the Secretary and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such assistance, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of their grantees.

(B) In conjunction with an evaluation or review under subparagraph (A), no State or political subdivision thereof (or grantee of either) shall be required to create or prepare new records to comply with subparagraph (A).

(f) Criminal Penalties for False Statements.—Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or misrepresentation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from funds allotted to the State under this section, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined, imprisoned for not more than five years, or both.

(g) Anti-Discrimination Provision.—(1)(A) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under title IX of the Education Amendments of 1972, or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964, programs and activities funded in whole or in part with funds made available under this section are considered to be programs and activities receiving Federal financial assistance.

(B) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this section.

(2) Whenever the Secretary finds that a State, locality, or local educational agency which has been provided payment from an allotment under this section has failed to comply with a provision of law referred to in paragraph (1)(A), with paragraph (1)(B), or with an applicable regulation (including one prescribed to carry out paragraph (1)(B)), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(B) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act of 1973, as may be applicable, or

(C) take such other action as may be provided by law.

(3) When a matter is referred to the Attorney General pursuant to paragraph (2)(A), or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in paragraph (1)(A) or in violation of paragraph (1)(B), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(h) Consultation With State and Local Officials.—In establishing regulations and guidelines to carry out this section, the Secretary shall consult with representatives of State and local governments.

(i) Definitions.—For purposes of this section:

(1) The term "State" has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

(2) The term "programs of public assistance" means programs in a State or local jurisdiction which—

(A) provide for cash, medical, or other assistance (as defined by the Secretary) designed to meet the basic subsistence or health needs of individuals or required in the interest of public health,

(B) are generally available to needy individuals residing in the State or locality, and

(C) receive funding from units of State or local government.

(3) The term "eligible legalized alien" means an alien who has been granted lawful resident status under section 200(a), but only until the end of the six-year period beginning on the date the alien was granted such status.

TITLE III—OTHER CHANGES IN THE IMMIGRATION LAW

SEC. 301. CHANGE IN COLONIAL QUOTA.

(a) INCREASE TO 3,000.—(1) Section 202(c) (8 U.S.C. 1152(c)) is amended by striking out "six hundred" and inserting in lieu thereof "3,000".

(2) Section 202(e) (8 U.S.C. 1152(e)) is amended by striking out "600" and inserting in lieu thereof "3,000".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to fiscal years beginning after the date of the enactment of this Act.

SEC. 302. VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS.

(a) ESTABLISHING VISA WAIVER PILOT PROGRAM.—Chapter 2 of title II is amended by adding after section 216 (added by section 122(c) of this Act) the following new section:

"VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

"SEC. 217. (a) ESTABLISHMENT OF PILOT PROGRAM.—The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this section referred to as the 'pilot program') under which the requirement of paragraph (26)(B) of section 212(a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this section, in the case of an alien who meets the following requirements:

"(1) SEEKING ENTRY AS TOURIST FOR LESS THAN 90 DAYS.—The alien is applying for admission during the pilot program period (as defined in subsection (e)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding 90 days.

"(2) NATIONAL OF PILOT PROGRAM COUNTRY.—The alien is a national of a country which—

"(A) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

"(B) is designated as a pilot program country under subsection (c).

"(3) EXECUTES ENTRY CONTROL AND WAIVER FORMS.—The alien before the time of such admission—

"(A) completes such immigration form as the Attorney General shall establish under subsection (b)(3), and

"(B) executes a waiver of review and appeal described in subsection (b)(4).

"(4) ROUND-TRIP TICKET.—The alien has a round-trip, nonrefundable, nontransferable, open-dated transportation ticket which—

"(A) is issued by a carrier which has entered into an agreement described in subsection (d), and

"(B) guarantees transport of the alien out of the United States at the end of the alien's visit.

"(5) NOT A SAFETY THREAT.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

"(6) NO PREVIOUS VIOLATION.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

"(b) CONDITIONS BEFORE PILOT PROGRAM CAN BE PUT INTO OPERATION.—

"(1) PRIOR NOTICE TO CONGRESS.—The pilot program may not be put into operation until the end of the 30-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in paragraph (2) is operational and effective and that the form described in paragraph (3) has been produced.

"(2) AUTOMATED DATA ARRIVAL AND DEPARTURE SYSTEM.—The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival into and departure from the United States of nonimmigrant visitors receiving a visa waiver under the pilot program.

"(3) VISA WAIVER INFORMATION FORM.—The Attorney General shall develop a form for use under the pilot program. Such form shall be consistent and compatible with the control system developed under paragraph (2). Such form shall provide for, among other items—

"(A) a summary description of the conditions for excluding nonimmigrant visitors from the United States under section 212(a) and under the pilot program,

"(B) a description of the conditions of entry with a waiver under the pilot program, including the limitation of such entry to 90 days and the consequences of failure to abide by such conditions, and

"(C) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(4) WAIVER OF RIGHTS.—An alien may not be provided a waiver under the pilot program unless the alien has waived any right—

"(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States or

"(B) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(c) DESIGNATION OF PILOT PROGRAM COUNTRIES.—

"(1) UP TO 8 COUNTRIES.—The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot program countries for purposes of the pilot program.

"(2) INITIAL QUALIFICATIONS.—For the initial period described in paragraph (4), a country may not be designated as a pilot program country unless the following requirements are met:

"(A) LOW NONIMMIGRANT VISA REFUSAL RATE FOR PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

"(B) LOW IMMIGRANT VISA REFUSAL RATE FOR EACH OF 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS.—For each fiscal year (within the pilot program period) after the initial period—

"(A) CONTINUING QUALIFICATION.—In the case of a country which was a pilot program country in the previous fiscal year, a country may not be designated as a pilot program country unless the sum of—

"(i) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

"(B) NEW COUNTRIES.—In the case of another country, the country may not be designated as a pilot program country unless the following requirements are met:

"(i) LOW NONIMMIGRANT VISA REFUSAL RATE IN PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

"(ii) LOW NONIMMIGRANT VISA REFUSAL RATE IN EACH OF THE 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) INITIAL PERIOD.—For purposes of paragraphs (2) and (3), the term 'initial period' means the period beginning at the end of the 30-day period described in subsection (b)(1) and ending on the last day of the first fiscal year which begins after such 30-day period.

"(d) CARRIER AGREEMENTS.—

"(1) IN GENERAL.—The agreement referred to in subsection (a)(4)(A) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the pilot program—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A), and

"(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the pilot program.

"(2) TERMINATION OF AGREEMENTS.—The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(e) DEFINITION OF PILOT PROGRAM PERIOD.—For purposes of this section, the term 'pilot program period' means the period beginning at the end of the 30-day period referred to in subsection (b)(1) and ending on the last day of the third fiscal year which begins after such 30-day period.".

(b) LIMITATION ON STAY IN UNITED STATES.—Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to section 217 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.".

(c) PROHIBITION OF ADJUSTMENT TO IMMIGRANT STATUS.—Section 245(c) (8 U.S.C. 1255(c)), as amended by sections 113(a) and 122(e)(1) of this Act, is further amended by adding at the end the following new paragraph:

"(5) An alien (other than an immediate relative specified in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.".

(d) Prohibition of Adjustment of Nonimmigrant Status.—Section 248 (8 U.S.C. 1258) is amended by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof ", and" and by adding at the end thereof the following new paragraph:

"(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.".

(e) Conforming Amendment to Table of Contents.—The table of contents is amended by adding after the item relating to section 216 (added by section 122(f) of this Act) the following new item:

"Sec. 217. Visa waiver pilot program for certain visitors.".

SEC. 302. G-4 SPECIAL IMMIGRANTS.

(a) Special Immigrant Status for Certain Officers and Employees of International Organizations and Their Immediate Family Members.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by striking out "or" at the end of subparagraph (G), by striking out the period at the end of subparagraph (H) and inserting in lieu thereof "; or", and by adding at the end of the following new subparagraph:

"(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(O), has resided and been physically present in the United States for periods totaling at least one half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;

"(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(O), has resided and been physically present in the United States for periods totaling at least one half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) applies for admission under this subparagraph no later than six months after the date of such death or six months after the date this subparagraph is enacted, whichever is later;

"(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) applies for admission under this subparagraph before January 1, 1993, and no later than six months after the date of such retirement or six months after the date this subparagraph is enacted, whichever is later; or

"(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family.".

(b) Nonimmigrant Status for Certain Parents and Children of Aliens Given Special Immigrant Status.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by section 122(a) of this Act, is further amended by striking out "or" at the end of subparagraph (M), by striking out the period at the end of subparagraph (N) and inserting in lieu thereof "; or", and by adding at the end the following new paragraph:

"(O)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

"(ii) a child of such parent or of an alien accorded the status of a special immigrant under paragraph (27)(I) (ii), (iii), or (iv).".

TITLE IV—REPORTS

SEC. 401. TRIENNIAL COMPREHENSIVE REPORT ON IMMIGRATION.

(a) Triennial Report.—The President shall transmit to the Congress, not later than January 1, 1987, and not later than January 1 of every third year thereafter, a comprehensive immigration-impact report.

(b) Details in Each Report.—Each report shall include—

(1) the number and classification of aliens admitted (whether as immediate relatives, special immigrants, refugees, or under the preferences classifications, or as nonimmigrants), paroled, or granted asylum, during the relevant period;

(2) a reasonable estimate of the number of aliens who entered the United States during the period without visas or who became deportable during the period under section 241; and

(3) a description of the impact of admissions and other entries of immigrants, refugees, asylees, and parolees into the United States during the period on the economy, labor and housing markets, the educational system, social services, foreign policy, environmental quality and resources, and the population growth rate of the United States.

(c) History and Projections.—The information (referred to in subsection (b)) contained in each report shall be—

(1) described for the preceding three-year period, and

(2) projected for the succeeding five-year period, based on reasonable estimates substantiated by the best available evidence.

(d) Recommendations.—The President also may include in such report any appropriate recommendations on changes in numerical limitations or other policies under title II of the Immigration and Nationality Act bearing on the admission and entry of such aliens to the United States.

SEC. 402. REPORTS ON UNAUTHORIZED ALIEN EMPLOYMENT AND DISCRIMINATION IN EMPLOYMENT.

(a) Presidential Reports.—The President shall transmit to Congress annual reports on the implementation of section 274A of the Immigration and Nationality Act (relating to unlawful employment of aliens) during the first five years after its implementation. Each report shall include—

(1) an analysis of the adequacy of the employment verification system provided under subsection (b) of that section;

(2) the status of the development and implementation of changes in that system under subsection (c) of that section, including the results of any demonstration projects conducted under paragraph (4) of such subsection; and

(3) the impact of the enforcement of that section on—

(A) the employment, wages, and working conditions of United States workers and on the economy of the United States,

(B) the number of aliens entering the United States illegally or who fail to maintain legal status after entry, and

(C) the violation of terms and conditions of nonimmigrant visas by foreign visitors.

(b) GAO Reports.—(1) Beginning one year after the date of enactment of this Act, and at intervals of one year thereafter for a period of five years after such date, the Comptroller General of the United States shall prepare and transmit to the Congress and to the taskforce established under subsection (c) a report describing the results of a review of the implementation and enforcement of section 274A of the Immigration and Nationality Act during the preceding twelve-month period, for the purpose of determining if—

(A) such provisions have been carried out satisfactorily;

(B) a pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment; and

(C) an unnecessary regulatory burden has been created for employers hiring such workers.

(2) In each report, the Comptroller General shall make a specific determination as to whether the implementation of that section has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin.

(3) If the Comptroller General has determined that such a pattern of discrimination has resulted, the report—

(A) shall include a description of the scope of that discrimination, and

(B) may include recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

(c) Review by Taskforce.—(1) The Attorney General, jointly with the Chairman of the Civil Rights Commission and the Chairman of the Equal Employment Opportunity Commission, shall establish a taskforce to review each report of the Comptroller General transmitted under subsection (b)(1).

(2) If the report transmitted includes a determination that the implementation of section 274A of the Immigration and Nationality Act has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin, the taskforce shall, taking into consideration any recommendations in the report, report to Congress recommendations for such legislation as may be appropriate to deter or remedy such discrimination.

(3) The Committees on the Judiciary of the House of Representatives and of the Senate shall hold hearings respecting any report of the taskforce under paragraph (2) within 60 days after the date of receipt of the report.

SEC. 403. REPORT ON VISA WAIVER PILOT PROGRAM.

(a) Monitoring and Report Pilot Program.—The Attorney General and the Secretary of State shall jointly monitor the pilot program established under section 217 of the Immigration and Nationality Act and shall report to the Congress not later than two years after the beginning of the program.

(b) Details in Report.—The report shall include—

(1) an evaluation of the program, including its impact—

(A) on the control of alien visitors to the United States;

(B) on consular operations in the countries designated under the program, as well as on consular operations in other countries in which additional consular personnel have been relocated as a result of the implementation of the program; and

(C) on the United States tourism industry; and

(2) recommendations—

(A) on extending the pilot program period; and

(B) on increasing the number of countries that may be designated under the program.

SEC. 404. PRESIDENTIAL REPORTS ON ANY LEGALIZATION PROGRAM.

(a) IN GENERAL.—The President shall transmit to Congress two reports after the legalization program has been established under section 202 of this Act.

(b) INITIAL REPORT ON LEGALIZED ALIENS.—The first report, which shall be transmitted not later than 18 months after the end of the application period for adjustment to lawful temporary residence status under the program, shall include a description of the population whose status is legalized under the program, including—

(1) geographical origins and manner of entry of these aliens into the United States,

(2) their demographic characteristics, and

(3) a general profile and characteristics of the population legalized under the program.

(c) SECOND REPORT ON IMPACT OF LEGALIZATION PROGRAM.—The second report, which shall be transmitted not later than three years after the date of transmittal of the first report, shall include—

(1) the impact of the program on State and local governments and on public health and medical needs of individuals in the different regions of the United States,

(2) the patterns of employment of the legalized population, and

(3) the participation of legalized aliens in social service programs.

SUMMARY OF IMMIGRATION REFORM AND CONTROL ACT OF 1985

I. CONTROL OF ILLEGAL IMMIGRATION

A. Funding for improved enforcement

States the sense of Congress that resources for 1) border patrol and other enforcement activities, and 2) examinations and other service activities of the Immigration and Naturalization Service, should be increased.

Authorizes $840,000,000 in FY 1986 and $830,000,000 in FY 1987 for these purposes to the Immigration and Naturalization Service.

Authorizes additional sums for enforcement activities of the Wage and Hour Division and the Office of Federal Contract Compliance of the Department of Labor and Equal Employment Opportunity Commission for enforcement activities in connection with the bill.

B. Increased penalties for immigration related violations

New criminal offense for bringing an alien to the U.S. knowing, or in reckless disregard of the fact, that the alien had not received prior official authorization to enter.

Increased felony penalties for activities involving the use, manufacture, or sale of counterfeit or altered identification documents, or those relating to other individuals, to satisfy a requirement of the Immigration and Nationality Act.

Adjustment of status procedure would not be available to aliens who have violated the terms of their nonimmigrant visa.

C. Unlawful employment of aliens

Penalties against persons who:

Knowingly hire, or for a fee or other consideration recruit or refer for employment in the U.S., an alien who is not authorized for such employment.

Knowingly continue to employ unauthorized aliens (except those hired before the date of enactment).

It is an affirmative defense against a charge of unlawful hiring, recruitment, or referral if the verification procedures below have been followed in good faith.

Verification procedure: person employing four or more persons who hires a new employee must attest, for all employees, under penalty of perjury, that he has examined documents which establish both (a) eligibility to work, and (b) identity (showing that the individual presenting documents is not presenting documents relating to another individual). A U.S. passport, certificate of citizenship, certificate of naturalization, or resident alien card would establish both. Otherwise one document of each type would be presented: a) Social Security card or birth certificate, and b) driver's license, other State issued card, alien identification card, or other document approved by the Attorney General.

President is directed to monitor and evaluate the above system. If he finds that the transitional system is not secure, he may implement such changes as may be necessary to establish a secure system to determine employment eligibility. Such changes would only be permitted after 60 days notice to Congress, and a major change—such as a telephone verification system or a new identification document—would require a two-year notice to Congress. In examining the need for a new system, the President may establish demonstration projects to test proposed new systems for up to three years.

If an employer does not follow the verification procedures and an unauthorized alien is found in the employ, the employer will be presumed to have knowingly hired the alien.

Penalties for substantive violation:

First 6 months (education period): no penalty.

Second 6 months: warning for the first offense.

1st offense (after warning if during second 6 months): administrative and desist order, civil fine of $100-$2,000.

2nd offense: cease and desist order, civil fine of $2,000-$5,000.

Pattern or practice of violation: cease and desist order, civil fines of $3,000-$10,000.

Cease and desist orders may also include:

Employer must follow the verification procedures.

Other penalties as appropriate.

In addition to charges initiated by the INS, a private party aggrieved by the hiring of an unauthorized alien may file a formal complaint before a designated INS unit. This unit shall investigate the charges and in its discretion may bring an action against an offending employer. Upon the INS conducting such an investigation, the accused employer shall be provided notice of the complaint.

Cease and desist orders may be issued by immigration judges, who shall give employers an opportunity for a hearing respecting the order. The decision of the immigration judge shall be based on a preponderance of the evidence and his decision is reviewable by the BIA and the appropriate Circuit Court of Appeals.

D. Agricultural worker provisions

Special procedure established for H-2 seasonal workers in agriculture:

The employer need not apply more than 65 days in advance of need.

The Secretary of Labor must provide a decision on labor certification no later than 20 days in advance of need (otherwise the application for certification is deemed approved).

If (1) U.S. workers referred to an agricultural employer are not qualified, (2) U.S. workers are promised to an employer but they do not show up on the date of need, or (3) an agricultural employer is faced with a critical labor need due to unforeseen harvest conditions, a 72-hour expedited procedure is available to allow employers access to needed H-2 workers.

Attorney General to approve all regulations in consultation with the Secretary of Agriculture and the Secretary of Labor.

Secretary of Labor to monitor and enforce the terms and conditions of the H-2 program as it applies to nonimmigrant workers and U.S. workers employed by the same employers. Provides $10,000,000 for such enforcement activities and to recruit U.S. workers.

Three year agricultural labor transition program: agricultural employers may continue to employ certain foreign workers under conditions set by AG for three years (100% of past undocumented workers in first year, 66% in second year, and 33% in third year).

Agricultural Worker Commission: 12 members to be appointed by the Speaker of the House, the President Pro Tem of the Senate, the Secretaries of Agriculture and Labor, and the Attorney General. Commission will be required to report within 2 years with specific legislative recommendations regarding the appropriate form of U.S. temporary worker programs.

II. LEGALIZATION OF STATUS

A. Legalization commission

Legalization Commission established by presidential appointment to determine whether appropriate immigration enforcement mechanisms are in place and whether these programs will control substantially illegal entry into the U.S. and eliminate substantially the employment of unauthorized aliens. Upon a finding by the Commission that the above conditions are met, the legalization program will go into effect.

B. Legalization of status

Temporary legal status for illegal aliens who have been physically present in the U.S. since the date of enactment and (i) have continuously resided in the U.S. since before January 1, 1980, or (ii) are Cuban/Haitian entrants who were given special status prior to January 1, 1981.

Persons receiving temporary status will be able to adjust to permanent resident status three years from date that they are granted temporary residence, if they satisfy a requirement of minimum English language competence and minimum knowledge of U.S. history and government, or are enrolled in a program to acquire such knowledge.

Alien must apply for adjustment of status to temporary legal status during a 12-month period beginning on a date 90 days after effective date of legalization.

Federally funded public assistance will not be available to those in temporary status, or for the first 3 years of permanent resident status (except that Cuban/Haitian entrants will continue to qualify for existing special benefits).

Persons will not be eligible for legalization who:

Have been convicted of a felony or 3 misdemeanors in the U.S.

Have assisted in political persecution.

Have been convicted of a crime involving moral turpitude, or 2 or more offenses for which sentences aggregating 5 years or more were imposed.

Advocate the overthrow of the government, are anarchists, communists, or Nazis, would engage in subversive activities, or who the government has reason to believe seek to enter for activities inimical to the welfare, safety, or security of the U.S.;

Have been convicted of a drug violation, other than simple possession of 30 grams or less of marijuana;

Where nonimmigrant exchange aliens subject to a two-year return requirement;

Have been outside the U.S. for any period of time which the Attorney General, by regulation, determines breaks continuance residence.

INS may utilize qualified organization approved by the Attorney General to assist in outreach and implementation.

Minimum fee of $100 to be charged for processing of legalization application. Authorizes INS to utilize fees collected to meet administrative costs of legalization program.

C. Reimbursement of States for legalization costs

Capped entitlement assistance by Secretary of HHS to meet costs of state and local public assistance as a result of legalization program. Formula for the money distributed is based on 1) number of eligible legalized aliens in state, 2) ratio of number of eligible legalized aliens in state to number of residents in state, 3) amount of expenditures state is likely to incur in providing public assistance to legalized aliens, and 4) ratio of amount of expenditures in one state to total expenditures in all states.

A cap of $600 million per year, for three years, is established on funds to be used for reimbursement;

Funds will become available in the fiscal year during which the application period for legalization ends, and may be used in the following fiscal year if not fully spent in the designated fiscal year.

III. OTHER IMMIGRATION LAW CHANGES

Colonial quota is increased from 600 to 3,000.

After INS has implemented an automated data processing system to properly track the entry and exit of nonimmigrants, the State Department may establish a pilot visa waiver program for up to 8 countries which provide a similar benefit to the U.S., if the visa refusal and abuse rates for the nationals of such countries are minimal, and if the visitor has a nonrefundable round-trip ticket.

Relief provisions are provided for certain employees of international organizations (G-4 immigrants) and the children and widowed spouses of such employees.

IV. REPORTS AND ANTI-DISCRIMINATION PROVISIONS

President shall report on 1) the form and effects of legal immigration to the U.S., 2) the effectiveness and impact of employer sanctions, 3) the security of current and proposed systems to determine employment eligibility, and the results of any related demonstration projects, and 4) the scope and impact of any legalization program.

The AG and the Secretary of State shall jointly monitor and report on the visa waiver program.

The GAO shall monitor the implementation of employer sanctions and report on whether a pattern of discrimination has resulted against eligible workers seeking employment. Attorney General in conjunction with the Civil Rights Commission and the EEOC shall review the G.A.O. reports and if a pattern of discrimination has resulted, shall recommend specific remedial legislative changes to the Congress.

PREPARED STATEMENT OF ROBERT C. KEENEY, VICE PRESIDENT, GOVERNMENT RELATIONS, UNITED FRESH FRUIT AND VEGETABLE ASSOCIATION

The United Fresh Fruit and Vegetable Association (United) is the national trade association of the fresh produce industry. Its 2,500 member companies handle over 80 percent of the fresh fruits and vegetables commercially marketed in the United States and are involved in all facets of the industry including growing, shipping, and distributing fresh fruits and vegetables. United has taken a major role during the last few years in presenting the views of the fresh produce industry regarding the need for reforms to the nation's immigration laws.

United appreciates the opportunity to provide testimony on S. 1200, the Immigration Reform and Control Act of 1985. In many respects, we believe this bill is a far superior piece of legislation than that which was considered last year. Of particular interest to this association is the provision relating to reforms to the H-2 program. However, the legislation is deficient in two respects--the lack of provisions addressing the foreign labor needs of growers of highly perishable commodities, and the failure to include a search warrant provision.

It has been United's policy for quite some time that an adequate labor force must be available to our agricultural industry in order to provide the world an abundant supply of food, and that the achievement of this goal may necessitate the employment of non-resident labor. United continues its policy of supporting immigration reform legislation that contains substantive reforms to the H-2 program, coupled with a complementary seasonal temporary foreign worker program for growers of highly perishable crops.

In order to avoid deterioration of highly perishable commodities such as fresh produce items, harvesting must occur as soon as possible after the appropriate level of maturity is reached. The maturity of these commodities depends on many factors which growers have little or no control. Not the least of which is the peculiarities associated with weather. Our growers and shippers do not have the luxury of waiting several days to arrange for an adequate work force. They must have a sufficient number of workers at the time and at the place of need if we, as an industry, are to be able to supply a bountiful harvest of fresh produce to the nation's citizens.

Any supplemental foreign worker program that Congress approves must be flexible and reliable enough to meet the labor needs of this highly labor intensive industry.

Time and time again, the industry has attempted to hire an adequate number of U.S. workers. Unfortunately, in almost all cases, sufficient workers who are willing, able, qualified and available to perform the tasks required do not exist. We find that the reasons for this are many and varied, but some basic factors seem to be common. Many U.S. workers prefer not to take jobs which are physically demanding, may be temporary and may require travelling long distances to the place of employment.

Some contend that growers cannot keep domestic workers because they pay low wages. A recent USDA labor survey refutes that claim. The survey discovered that farmers, on an average nationwide basis, are paying a piece work wage rate of $5.61 per hour--significantly higher than the federal minimum wage of $3.35. In the principal growing states of California and Florida, the wage rate is even greater. In any event, sufficient domestic workers are not available, necessitating the need for the industry to have suitable supplemental foreign worker programs.

We support the reforms to the H-2 program contained in S. 1200. Although not all of the reforms needed by H-2 users are included in the legislation, many of the remaining changes can and should be addressed during the regulatory process. The legislation codifies many of the practices now occurring in the administration of the H-2 program. This will ensure that the program is available for agricultural producers in the future.

However, we are concerned that S. 1200 does not contain a complementary program for those growers of highly perishable, short-seasoned, labor intensive commodities. Even with the reforms to the H-2 program embodied in S. 1200, this program is still unworkable for those growers. United advocates the inclusion of a Panetta-Morrison type amendment that would establish a complementary supplemental foreign worker program. As the Committee knows, this amendment was approved by a substantial margin of the Members of the House of Representatives during debate that occurred in 1984.

This complementary program contains a number of features making it more workable for growers of highly perishable commodities. The program allows temporary foreign workers to be employed by more than one employer. This makes it easier for them to move freely from employer to employer, following the harvesting of a number of fresh fruits and vegetables. The Attorney General, in consultation with the Secretaries of Labor and Agriculture, would establish regulations permitting the hiring of these workers. In addition, the Attorney General would determine the number of these workers that can be allowed into the country. Several key provisions are contained in the proposal that would protect foreign workers and ensure that the program does not adversely affect wages and working conditions of domestic workers. We understand that appropriate amendments to S. 1200 are in the process of being drafted and will be shared with the Subcommittee at the earliest possible time.

In addition to the H-2 reforms and the complementary supplemental foreign worker program, United recommends that the legislation contain a requirement that agents of the Immigration and Naturalization Service first obtain properly executed search warrants prior to entering an open field in search of undocumented aliens.

The provision will guarantee farmers, field workers, and other outdoor operators the same protections afforded other citizens under the fourth amendment to the Constitution.

Currently, INS agents may enter a field, disrupt the business operation, and question employers and employees as to their right to be or to remain in the United States. This does not occur in factories, restaurants or hotels where over 85 percent of illegal aliens work. It is this double standard of search and seizure that has caused serious harm and damage to people and property.

This bi-partisan provision was overwhelmingly approved by both Houses of Congress last year. A similar provision should be included in S. 1200 to end this discriminatory treatment.

In conclusion, United wants to pledge its continued support and assistance as the Senate develops needed reforms to the nation's immigration laws and workable supplemental foreign labor programs.

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